

1 SB344  
2 175003-1  
3 By Senator Holtzclaw  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 10-MAR-16

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8 SYNOPSIS: Under existing law, an employee of a private  
9 company that provides direct services to schools is  
10 not eligible for unemployment compensation for the  
11 period that the individual does not perform his or  
12 her duties because of a holiday or weather  
13 conditions.

14 This bill would provide that an employee of  
15 a private company that provides direct services to  
16 schools may not receive unemployment benefits  
17 during breaks in employment occasioned by a  
18 vacation or holiday recess.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT

23  
24 To amend Section 25-4-70, Code of Alabama 1975, as  
25 amended by Act 2015-453, 2015 Regular Session, relating to  
26 unemployment compensation; to provide that an employee of  
27 private a company that provides direct services to schools may

1 not receive unemployment benefits during breaks in employment  
2 occasioned by a vacation or holiday recess.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 25-4-70, Code of Alabama 1975, as  
5 amended by Act 2015-453, 2015 Regular Session, is amended to  
6 read as follows:

7 "§25-4-70.

8 "(a) After contributions have been due under this  
9 chapter for two years, benefits shall become payable from the  
10 fund to any employee who thereafter is or becomes unemployed  
11 and eligible for benefits, and shall be paid through  
12 unemployment offices or such other agencies at such times and  
13 in such manner as the director may prescribe.

14 "(b) Benefits based on service in employment defined  
15 in subdivisions (a) (2) and (a) (3) of Section 25-4-10 shall be  
16 payable in the same amount, on the same terms and subject to  
17 the same conditions as compensation payable on the basis of  
18 other service subject to this chapter; except, that:

19 "(1) With respect to any week of unemployment  
20 beginning after December 31, 1977, benefits shall not be paid  
21 based on service in an instructional, research, or principal  
22 administrative capacity for any educational institution for  
23 any such week commencing during the period between two  
24 successive academic years, or during a similar period between  
25 two regular terms, whether or not successive, or during a  
26 period of paid sabbatical leave provided for in the  
27 individual's contract, to any individual if such individual

1 performs such services in the first of such academic years (or  
2 terms) and if there is a contract or reasonable assurance that  
3 such individual will perform services in any such capacity for  
4 any educational institution in the second of such academic  
5 years or terms.

6 "(2) With respect to any week of unemployment  
7 beginning after April 3, 1983, benefits shall not be paid on  
8 the basis of service in any other capacity for an educational  
9 institution, to any individual for any such week which  
10 commences during a period between two successive academic  
11 years or terms if such individual performs such services in  
12 the first of such academic years or terms and there is a  
13 reasonable assurance that such individual will perform such  
14 services in the second of such academic years or terms, except  
15 that if compensation is denied to any individual under this  
16 subdivision (2) for weeks of unemployment beginning on or  
17 after April 3, 1983, and such individual was not offered an  
18 opportunity to perform such services for the educational  
19 institution for the second of such academic years or terms,  
20 such individual shall be entitled to a retroactive payment of  
21 benefits for each week for which the individual filed a timely  
22 claim for benefits and for which benefits were denied solely  
23 by reason of this subdivision (2); provided further that such  
24 individual has given notice that the opportunity to return was  
25 not offered or was withdrawn to the director in such manner  
26 and within such time as the director by regulation shall  
27 prescribe.

1           "(3) With respect to any week of unemployment  
2 beginning on or after April 1, 1984, benefits shall not be  
3 paid based on services in any capacity described in  
4 subdivisions (1) and (2) to any individual for any week which  
5 commences during an established and customary vacation period  
6 or holiday recess if such individual performs such services in  
7 the period immediately before such vacation period or holiday  
8 recess, and there is a reasonable assurance that such  
9 individual will perform such services in the period  
10 immediately following such vacation period or holiday recess.  
11 The term "employment" shall include services performed in the  
12 employ of an Indian tribe, as herein defined, provided such  
13 service is excluded from employment as defined in FUTA by  
14 reason of Section 3306(c)(7), and is not otherwise excluded  
15 from employment under this chapter for purposes of this  
16 section. The exclusion from employment in Section 25-4-10(b)  
17 shall be applicable to services performed in the employ of an  
18 Indian tribe.

19           "(4) With respect to any week of unemployment  
20 beginning on or after April 1, 1984, benefits shall not be  
21 paid on the basis of services described in subdivisions (1)  
22 and (2) of this subsection in any such capacities as specified  
23 in subdivisions (1), (2), and (3) to any individual who  
24 performed such services in an educational institution while in  
25 the employ of an educational service agency. For the purposes  
26 of this subdivision the term "educational service agency"  
27 shall mean a governmental agency or governmental entity which

1 is established and operated exclusively for the purpose of  
2 providing such services to one or more educational  
3 institutions.

4 "(5) With respect to weeks of unemployment beginning  
5 on or after April 1, 1984, benefits shall not be paid with  
6 respect to services to which Sections 25-4-8(a)(7),  
7 25-4-8(a)(8), 25-4-10(a)(2) and 25-4-10(a)(3) apply, if such  
8 services are provided to or on behalf of an educational  
9 institution, under the same circumstances and subject to the  
10 same terms and conditions as described in subdivisions (1),  
11 (2), (3), and (4) of this subsection.

12 "(6) With respect to weeks of unemployment beginning  
13 before April 1, 1984, benefits shall be paid on the basis of  
14 this section prior to that date.

15 "(7) For the purposes of this subsection, the term  
16 "reasonable assurance" means a written, verbal, or implied  
17 agreement that the employee will perform services during the  
18 ensuing academic year or term and the term "contract" is  
19 intended to include tenure status.

20 "(c) Benefits paid based on services in the employ  
21 of an Indian tribe shall be payable on the same terms and  
22 subject to the same conditions as compensation payable on the  
23 basis of other service subject to this chapter.

24 "(d) Notwithstanding any provision of law, with  
25 respect to any week of unemployment beginning on or after May  
26 1, 2015, benefits based on service in employment defined in  
27 subdivision (1) of subsection (a) of Section 25-4-10 may not

1 be paid with respect to services rendered to an educational  
2 institution, when the services are performed by an individual  
3 employed by an employer primarily or exclusively engaged in  
4 the provision of its employees to perform work for educational  
5 institutions, for any week commencing during the period  
6 between two successive academic years or terms, or for any  
7 week which commences during an established and customary  
8 vacation period or holiday recess, ~~for the period that the~~  
9 ~~individual does not perform his or her duties because of a~~  
10 holiday or weather if the individual performs services for the  
11 educational institution in the period immediately before the  
12 vacation period or holiday recess, and there is a reasonable  
13 assurance that such individual will perform the same or  
14 similar services for the educational institution in the period  
15 immediately following the vacation period or holiday recess.

16 This subsection applies regardless of whether the employer  
17 qualifies for exemption from federal employment tax under 26  
18 U.S.C. 501(a) and regardless of whether the employer is a  
19 religious, charitable, or educational institution or  
20 organization. For purposes of this subsection, the term  
21 reasonable assurance shall have the same meaning as set out in  
22 subdivision (7) of subsection (b) of this section."

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