

House Bill 795 (AS PASSED HOUSE AND SENATE)

By: Representatives Gravley of the 67th, Hilton of the 95th, Williamson of the 115th, Coomer of the 14th, and Kelley of the 16th

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 authorize the Commissioner of Labor to perform certain functions; to
3 amend Chapters 2 and 9 of Title 34 of the Official Code of Georgia Annotated, relating to
4 the Department of Labor and workers' compensation, respectively, so as to provide for
5 certain administrative functions of such department and the State Board of Workers'
6 Compensation; to authorize the Commissioner of Labor to prescribe certain rules; to provide
7 for definitions; to authorize the Commissioner of Labor to conduct fingerprint based criminal
8 background checks for individuals employed by the Department of Labor; to provide a
9 process for conducting such criminal background checks; to limit the use, dissemination, and
10 liability relating to information obtained from the criminal background checks; to change
11 certain provisions relating to the eligibility for appointment as administrative law judge
12 emeritus of the State Board of Workers' Compensation; to provide for terms of office and
13 salary for the office of administrative law judge emeritus; to change certain provisions
14 relating to the eligibility for appointment as director emeritus; to provide procedural
15 requirements for rules of the board; to provide for related matters; to repeal conflicting laws;
16 and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

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

22 ~~"(4) To make and promulgate such rules or changes in rules as he may deem advisable~~
23 ~~for the prevention of accidents or the prevention of industrial or occupational diseases in~~
24 ~~every employment or place of employment, and such rules or changes in rules for the~~
25 ~~construction, repair, and maintenance of places of employment, places of public~~
26 ~~assembly, and public buildings as he may deem advisable, to render them safe. The~~

27 Commissioner may appoint committees composed of employers, employees, and experts
 28 ~~to suggest rules or changes therein~~ To prescribe such rules and regulations, consistent
 29 with the terms, intent, and purposes of this title, except for Chapter 9 of this title,
 30 necessary for the proper administration and enforcement thereof;"

31 SECTION 2.

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

33 "34-2-15.

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

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

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

39 (A) A conviction of a crime;

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

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

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

44 (iii) An adjudication or sentence was otherwise withheld or not entered on the charge;

45 or

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

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

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

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

54 (b) Notwithstanding any other provisions of law to the contrary, the Commissioner of
 55 Labor shall have the authority to require a criminal background check on any individual
 56 employed by the Department of Labor or applying for employment with the Department
 57 of Labor on or after January 1, 2019, and shall require a criminal background check on any
 58 such individual with direct access to federal return information as part of his or her job
 59 duties.

60 (c) All individuals employed by the Department of Labor shall be required upon request
 61 of the Commissioner of Labor to furnish two full sets of fingerprints in such form and of
 62 such quality as the GCIC and the Federal Bureau of Investigation deem acceptable for

63 submission. It shall be the duty of each law enforcement agency in this state to fingerprint
64 those individuals required to be fingerprinted under this Code section.

65 (d) Upon receipt thereof, the GCIC shall promptly transmit one set of fingerprints to the
66 Federal Bureau of Investigation for a search of the bureau records, retain another set of
67 fingerprints, and promptly conduct a search of its own records and records to which it has
68 access. The GCIC shall notify the Department of Labor in writing of any criminal record
69 or if there is no such finding. After a search of Federal Bureau of Investigation records and
70 fingerprints and upon receipt of the bureau's report and the GCIC's findings, the
71 Commissioner of Labor shall make a determination about the individual's criminal record.

72 (e) An individual requested to submit fingerprints pursuant to this Code section may obtain
73 information concerning the accuracy of his or her criminal record, and the Department of
74 Labor shall refer such individual to the appropriate state or federal law enforcement agency
75 that was involved in the arrest or conviction.

76 (f) The Department of Labor shall perform criminal background checks either under
77 agreement with the GCIC or contract with the GCIC and appropriate law enforcement
78 agencies which have access to GCIC and Federal Bureau of Investigation information to
79 have such agencies perform criminal background checks for the Department of Labor. The
80 Department of Labor or the appropriate law enforcement agencies may charge fees for
81 performing criminal background checks, provided that such fees are reasonable.

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

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

SECTION 3.

96
97 Said title is further amended by revising Code Section 34-9-57, relating to the creation of
98 administrative law judge emeritus of the State Board of Workers' Compensation, eligibility
99 for and manner of appointment, and compensation, as follows:

100 "34-9-57.

101 (a) There is created the office of administrative law judge emeritus of the board.

102 (b) Any administrative law judge, formerly known as deputy director, of the board ~~now~~
103 ~~or hereafter~~ in office on June 30, 2018, shall be eligible for appointment as administrative
104 law judge emeritus, ~~provided~~ once he or she has reached the age of 70 years and has either
105 (1) attained 20 years of service in the capacity of administrative law judge or deputy
106 director or (2) attained 20 years of total service, aggregating his or her service as
107 administrative law judge or deputy director with any years of prior service as director,
108 member of the General Assembly of Georgia or the Georgia National Guard, or as special
109 assistant attorney general, or any combination of services in these offices.

110 (c) ~~An~~ ~~Such~~ administrative law judge emeritus shall be eligible for appointment by the
111 Governor in the same manner as provided for appointment of a director emeritus under
112 Code Section 34-9-53 and shall exercise the same duties as provided in Code
113 Section 34-9-55 for a director emeritus.

114 (d) Notwithstanding the provisions of subsection (b) of this Code section, all persons
115 appointed to the office of administrative law judge emeritus of the board prior to
116 June 30, 2018, shall continue to hold such office and shall receive the annual salary
117 provided for in subsection (e) of this Code section.

118 (e) All persons appointed to the office of administrative law judge emeritus as provided
119 in this Code section shall receive an annual salary equal to one-third of the annual salary
120 provided by law for an administrative law judge of the board at the time of appointment of
121 the administrative law judge emeritus under this Code section, such salary to be paid by the
122 board in semimonthly installments from funds provided by law for the operation of the
123 board."

124 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'
125 compensation, is amended by revising Code Section 34-9-53, relating to directors emeritus
126 of the State Board of Workers' Compensation and the eligibility and procedure for
127 appointment, as follows:

128 "34-9-53.

129 (a) There is created the office of director emeritus of the board.

130 (b) Any director of the board ~~now or hereafter~~ in office on June 30, 2018, shall be eligible
131 for appointment as director emeritus, ~~provided that~~ once such member of the board has

132 reached the age of 60 years and has also attained 20 consecutive years of service in the
 133 capacity of chairman, director, deputy director or administrative law judge, member of the
 134 General Assembly, or a combination of consecutive service in these offices;~~and provided;~~
 135 ~~further, provided~~ that not more than five years' service in the General Assembly shall be
 136 allowed as service credit under this Code section. The Governor shall appoint to the
 137 position of director emeritus anyone eligible under this Code section who shall advise the
 138 Governor in writing that he or she desires to resign from the office of director of the board
 139 and accept appointment as director emeritus of the board, stating in such notice the date
 140 upon which the resignation as director and appointment as director emeritus shall become
 141 effective; and upon such notice the Governor shall make such appointment effective upon
 142 the date requested, and the resignation as director of the board shall be automatically
 143 effective as of the same date as the appointment as director emeritus.

144 (c) Notwithstanding the provisions of subsection (b) of this Code section, all persons
 145 appointed to the office of director emeritus of the board prior to June 30, 2018, shall
 146 continue to hold such office for the term and salary provided for in Code Section 34-9-54."

147 **SECTION 4.**

148 Said chapter is further amended in Code Section 34-9-60, relating to rule-making and
 149 subpoena powers and service and enforcement of subpoenas, by adding a new subsection to
 150 read as follows:

151 "(c) Any rules of the board shall be subject to and adopted in compliance with the
 152 provisions of Code Section 50-13-4. In addition to providing notice to any chairpersons
 153 specified by the presiding officers as provided in subsection (e) of Code Section 50-13-4,
 154 the legislative counsel shall also transmit notice of the board's intended action to the House
 155 Committee on Judiciary, the Senate Judiciary Committee, the House Committee on
 156 Industry and Labor, and the Senate Insurance and Labor Committee, and each such
 157 committee shall be granted all the rights provided for interested persons and governmental
 158 subdivisions in paragraph (2) of subsection (a) of Code Section 50-13-4."

159 **SECTION 5.**

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