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## HOUSE BILL NO. 1339

Offered January 24, 2000

A *BILL to amend and reenact § 60.2-219 of the Code of Virginia, relating to unemployment compensation; definition of employment.*

Patrons—Byron, Albo, Blevins, Devolites, Drake, Dudley, Ingram, Katzen, Kilgore, Landes, Louderback, McQuigg, O'Brien, Purkey and Wardrup; Senator: Watkins

Referred to Committee on Labor and Commerce

**Be it enacted by the General Assembly of Virginia:**

**1. That § 60.2-219 of the Code of Virginia is amended and reenacted as follows:**

§ 60.2-219. Services not included in term "employment".

The term "employment" shall not include:

1. Service performed in the employ of the United States government or of any instrumentality of the United States which is wholly or partially owned by the United States or which is exempt from the tax imposed by § 3301 of the Federal Internal Revenue Code by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

2. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress, including service performed after June 30, 1939, for an employer determined to be subject to the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) by the agency or agencies empowered to make such determination by an act of Congress, and service as an employer representative determined to be subject to such act by such agency or agencies. The Commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten days after publication thereof, in the manner provided in § 60.2-111 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this title, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this title;

3. Agricultural labor as defined in § 60.2-201 except as provided for in § 60.2-214;

4. Domestic service in a private home, local college club or local chapter of a college fraternity or sorority except as provided for in § 60.2-215;

5. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an employee, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

6. Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in the catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes and (ii) service performed on or in connection with a vessel of more than ten net tons, determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States;

6a. Service performed by an individual on a boat engaged in catching fish or other forms of aquatic life under an arrangement with the owner or operator of such boat pursuant to which:

a. Such individual does not receive any cash remuneration, other than as provided in subdivision b of subdivision 6a;

b. Such individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life, or a share of the proceeds from the sale of such catch; and

c. The amount of such individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life, but only if the operating crew of such boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat is normally made up of fewer than ten individuals;

7. Service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of his father or mother;

8. Service performed in any calendar quarter in the employ of any organization exempt from income tax (i) under § 501 (a) of the Federal Internal Revenue Code (26 U.S.C.), other than an organization

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60 described in § 401 (a) of such Code, or (ii) under § 521 of the Federal Internal Revenue Code, if the  
61 remuneration for such service is less than fifty dollars;

62 9. Service performed in the employ of a school, college or university, if such service is performed by  
63 a student who is enrolled and is regularly attending classes at such school, college or university;

64 10. Service performed as a student nurse in the employ of a hospital or a nurses' training school by  
65 an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or  
66 approved pursuant to state law;

67 11. Service performed as an intern in the employ of a hospital by an individual who has completed a  
68 four-year course in a medical school chartered or approved pursuant to state law;

69 12. Service performed by an individual for an employing unit as an insurance agent or as an  
70 insurance solicitor, if all such service performed by such individual for such employing unit is  
71 performed for remuneration solely by way of commission;

72 13. Service performed by an individual for an employing unit as a real estate salesman, if all such  
73 service performed by such individual for such employing unit is performed for remuneration solely by  
74 way of commission;

75 14. Service covered by an arrangement between the Commission and the agency charged with the  
76 administration of any other state or federal unemployment compensation law pursuant to which all  
77 services performed by an individual for an employing unit during the period covered by such employing  
78 unit's duly approved election are deemed to be performed entirely within such agency's state or under  
79 such federal law;

80 15. Service performed by an individual for an employing unit as an agent in the wholesale  
81 distribution and sale of gasoline and other petroleum products, if all such service performed by such  
82 individual for such employing unit is performed for remuneration solely by way of commission;

83 16. Service not in the course of the employer's trade or business performed in any calendar quarter  
84 by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such  
85 service is performed by an individual who is regularly employed by such employer to perform such  
86 service. For the purposes of this subdivision, an individual shall be deemed to be regularly employed by  
87 an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter  
88 such individual performs for such employer for some portion of the day service not in the course of the  
89 employer's trade or business, or (ii) such individual was regularly employed, as determined under (i) of  
90 this subdivision, by such employer in the performance of such service during the preceding calendar  
91 quarter;

92 17. a. Service performed by an individual who is enrolled at a nonprofit or public educational  
93 institution which normally maintains a regular faculty and curriculum and normally has a regularly  
94 organized body of students in attendance at the place where its educational activities are carried on. In  
95 order for such services to be excluded from "employment":  
96

97 (1) The individual shall be enrolled as a student in a full-time program,

98 (2) The program shall be taken for credit at such institution,

99 (3) The program combines academic instruction with work experience, and

100 (4) Such service shall be an integral part of such program.

101 b. Such institution shall certify to the employer that subdivisions 17 a (1) through 17 a (4) of this  
section have been met.

102 c. This subdivision shall not apply to service performed in a program established for or on behalf of  
103 an employer or group of employers;

104 18. Service performed in the employ of a hospital, if such service is performed by a patient of the  
105 hospital, as defined in § 60.2-221;

106 19. Services provided by an individual pursuant to an agreement among the service recipient, a  
107 public human services agency as defined in § 63.1-291, and such individual to an eligible service  
108 recipient in his own home or the home of the service provider, *unless coverage of such services is*  
109 *required by the provisions of § 3304(a)(6)(A) of the Federal Unemployment Tax Act;*

110 20. Services performed by an individual as a "direct seller" provided that:

111 a. Such person:

112 (1) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to any  
113 buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary of the  
114 Treasury prescribes by regulations for resale by the buyer or any other person in the home or otherwise  
115 than in a permanent retail establishment;

116 (2) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to a  
117 consumer in the home or otherwise than in a permanent retail establishment; or

118 (3) Is engaged in the trade or business of the delivery or distribution of newspapers or shopping  
119 news (including any delivery services directly related to such trade or business).

120 b. Substantially all of the remuneration for the services performed as a direct seller, whether or not  
121 paid in cash, is directly related to sales or output, including the performances of services, rather than to

122 the number of hours worked;

123 c. The services performed by the person are performed pursuant to a written contract between such  
124 person and the person for whom the services are performed and such contract provides that the person  
125 will not be treated as an employee with respect to such services for federal tax purposes;

126 21. Service performed after July 1, 1984, by an individual as a taxicab driver, or as a driver of an  
127 executive sedan as defined in § 46.2-2500, provided the Commission is furnished evidence that such  
128 individual is excluded from taxation by the Federal Unemployment Tax Act;

129 22. Services performed by an individual as a "contract carrier courier driver" provided the  
130 Commission is furnished evidence that such individual is excluded from taxation by the Federal  
131 Unemployment Tax Act;

132 23. Services performed by a full-time student in the employ of an organized camp if:

133 a. Such camp:

134 (1) Did not operate for more than seven months in the calendar year and did not operate for more  
135 than seven months in the preceding calendar year; or

136 (2) Had average gross receipts for any six months in the preceding calendar year which were not  
137 more than thirty-three and one-third percent of its average gross receipts for the other six months in the  
138 preceding calendar year; and

139 b. Such full-time student performed services in the employ of such camp for less than thirteen  
140 calendar weeks in such calendar year;

141 24. Services performed by an individual as a court reporter for an employing unit if all such service  
142 performed by the individual for the employing unit is performed for remuneration solely by way of  
143 commission; and

144 25. Services performed by an individual as a cosmetologist or as a barber provided the Commission  
145 is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax  
146 Act.