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## SENATE BILL NO. 127

Offered January 9, 2002

Prefiled January 7, 2002

A *BILL* to amend and reenact § 60.2-618 of the Code of Virginia, relating to unemployment compensation; benefits disqualification for misconduct.

Patron—Ruff

Referred to Committee on Commerce and Labor

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

**1. That § 60.2-618 of the Code of Virginia is amended and reenacted as follows:**

§ 60.2-618. Disqualification for benefits.

An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked thirty days or 240 hours or from any subsequent employing unit:

1. For any week benefits are claimed until he has performed services for an employer (i) during thirty days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.

2. a. For any week benefits are claimed until he has performed services for an employer (i) during thirty days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work. *An employer shall have satisfied the burden of proving that an individual was discharged for misconduct connected with his work if the employer establishes by a preponderance of evidence that the employer discharged the individual as the direct result of the employer's bona fide belief that the individual had engaged at the place of employment in activity that is prohibited by a criminal law of this Commonwealth.*

b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

(1) An employee's ~~confirmed positive test for~~ *having in his bodily fluids while at work a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such as established by a confirmed positive test was conducted either (i) at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such, in which event the test shall have been performed, and a sample collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent; (ii) pursuant to a drug testing program conducted by personnel of a probation agency or personnel of any program or agency approved by a probation agency pursuant to § 18.2-251 or § 18.2-251.01; or (iii) pursuant to any other drug testing program administered pursuant to an order of a court of competent jurisdiction requiring the employee to remain drug free and to submit to such tests. Notwithstanding any contrary provision of law, the results of a drug test performed pursuant to clause (ii) or (iii) of the preceding sentence shall be made available to the Commission by the probation agency or court responsible for the administering of such test upon motion of the Commission or employer requesting such results and asserting with specificity that the results are relevant to a determination of whether the employee had in his bodily fluids while at work a nonprescribed controlled substance identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.* The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

3. a. If it is determined by the Commission that such individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him. The disqualification shall commence with the week in which

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59 such failure occurred, and shall continue for the period of unemployment next ensuing until he has  
60 performed services for an employer (i) during thirty days, whether or not such days are consecutive, or  
61 (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

62 b. In determining whether or not any work is suitable for an individual, the Commission shall  
63 consider the degree of risk involved to his health, safety and morals, his physical fitness and prior  
64 training, his experience, his length of unemployment and the accessibility of the available work from his  
65 residence.

66 c. No work shall be deemed suitable and benefits shall not be denied under this title to any otherwise  
67 eligible individual for refusing to accept new work under any of the following conditions:

68 (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

69 (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the  
70 individual than those prevailing for similar work in the locality; or

71 (3) If as a condition of being employed the individual would be required to join a company union or  
72 to resign from or refrain from joining any bona fide labor organization.

73 d. No individual shall be qualified for benefits during any week that such individual, in connection  
74 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,  
75 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is (i) required as a  
76 condition of employment and (ii) performed, and a sample is collected, in accordance with scientifically  
77 recognized standards by a laboratory accredited by the United States Department of Health and Human  
78 Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or  
79 the equivalent. The disqualification shall commence with the week in which such a test was conducted,  
80 and shall continue for the period of unemployment next ensuing until he has performed services for an  
81 employer (i) during thirty days, whether or not such days are consecutive, or (ii) for 240 hours, and  
82 subsequently becomes totally or partially separated from such employment.

83 4. For fifty-two weeks, beginning with the date of the determination or decision, if the Commission  
84 finds that such individual, within thirty-six calendar months immediately preceding such determination  
85 or decision, has made a false statement or representation knowing it to be false, or has knowingly failed  
86 to disclose a material fact, to obtain or increase any benefit or payment under this title, the  
87 unemployment compensation of any other state, or any other program of the federal government which  
88 is administered in any way under this title, either for himself or any other person. Additionally, such  
89 individual shall be ineligible for benefits until he has repaid the Commission the sum which has been  
90 fraudulently obtained.

91 5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his  
92 release from prison or jail until he has performed services for an employer for (i) thirty days, whether or  
93 not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated  
94 from such employment.