

025467526

SENATE BILL NO. 127

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 28, 2002)

(Patron Prior to Substitute—Senator Ruff)

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

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.

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

(1) An employee's confirmed positive test for 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 or rehabilitation agreement, 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.~~ 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 such failure occurred, and shall continue for the period of unemployment next ensuing 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.

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

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

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

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

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

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

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

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