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## HOUSE BILL NO. 1288

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on January 29, 2004)

(Patrons Prior to Substitute—Delegates Tata and Baskerville [HB177])

A *BILL to amend and reenact §§ 60.2-528 and 60.2-618 of the Code of Virginia, relating to unemployment compensation; voluntarily leaving employment to accompany military spouse.*

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

**1. That §§ 60.2-528 and 60.2-618 of the Code of Virginia are amended and reenacted as follows:**

§ 60.2-528. Individual benefit charges.

A. An individual's "benefit charges" shall be computed in the following manner:

1. For each week benefits are received, a claimant's "benefit charges" shall be equal to his benefits received for such week.

2. For each week extended benefits are received, pursuant to § 60.2-610 or § 60.2-611, a claimant's "benefit charges" shall be equal to one-half his benefits received for such week. However, a claimant's "benefit charges" for extended benefits attributable to service in the employ of a governmental entity referred to in subdivisions 1 through 3 of subsection A of § 60.2-213 shall be equal to the full amount of such extended benefit.

3. For each week partial benefits are received, the claimant's "benefit charges" shall be computed (i) in the case of regular benefits as in subdivision 1 of this subsection, or (ii) in the case of extended benefits as in subdivision 2 of this subsection.

B. 1. The employing unit from whom such individual was separated, resulting in the current period of unemployment, shall be the most recent employing unit for whom such individual has performed services for remuneration (i) during ~~thirty~~30 days, whether or not such days are consecutive, or (ii) during 240 hours. If such individual's unemployment is caused by separation from an employer, such individual's "benefit charges" for such period of unemployment shall be deemed the responsibility of the last employer for (i) ~~thirty~~30 days or (ii) 240 hours prior to such period of unemployment.

2. Any employer charged with benefits paid shall be notified of the charges quarterly by the Commission. The amount specified shall be conclusive on the employer unless, not later than ~~thirty~~30 days after the notice of benefit charges was mailed to its last known address or otherwise delivered to it, the employer files an appeal with the Commission, setting forth the grounds for such an appeal. Proceedings on appeal to the Commission regarding the amount of benefit charges under this subsection or a redetermination of such amount shall be in accordance with the provisions of § 60.2-500. The decision of the Commission shall be subject to the provisions of § 60.2-500. Any appeal perfected pursuant to the provisions of this section shall not address any issue involving the merits or conditions of a claimant's separation from employment.

C. No "benefit charges" shall be deemed the responsibility of an employer of:

1. An individual whose separation from the work of such employer arose as a result of a violation of the law by such individual, which violation led to confinement in any jail or prison;

2. An individual who voluntarily left employment in order to accept other employment, genuinely believing such employment to be permanent;

3. An individual with respect to any weeks in which benefits are claimed and received after such date as that individual refused to accept an offer of rehire by the employer because such individual was in training with approval of the Commission pursuant to § 60.2-613;

4. An individual who voluntarily left employment to enter training approved under § 236 of the Trade Act of 1974 (19 U.S.C. § 2296 et seq.);

5. An individual hired to replace a member of the Reserve of the United States Armed Forces or the National Guard called into active duty as a result of Operation Desert Shield or Operation Desert Storm and whose employment is terminated concurrent with and because of that member's return from active duty;

6. An individual who left employment voluntarily with good cause due to a personal bona fide medical reason caused by a non-job-related injury or medical condition; ~~or~~

7. An individual participating as an inmate in (i) the Diversion Center Incarceration Program pursuant to § 19.2-316.3; (ii) state or local work release programs pursuant to § 53.1-60 or § 53.1-131; (iii) community residential programs pursuant to §§ 53.1-177, 53.1-178, and 53.1-179; or (iv) any similar work release program, whose separation from work arose from conditions of release or parole from such program; *or*

8. *An individual who leaves employment to accompany a spouse, who is a member of the armed services, to a new military assignment from which the individual's place of employment is not*

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60 *reasonably accessible.*

61 § 60.2-618. Disqualification for benefits.

62 An individual shall be disqualified for benefits upon separation from the last employing unit for  
63 whom he has worked ~~thirty~~30 days or 240 hours or from any subsequent employing unit:

64 1. For any week benefits are claimed until he has performed services for an employer (i) during  
65 ~~thirty~~30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes  
66 totally or partially separated from such employment, if the Commission finds such individual is  
67 unemployed because he left work voluntarily without good cause. As used in this chapter, "good cause"  
68 shall not include (i) voluntarily leaving work with an employer to become self-employed or (ii)  
69 voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality,  
70 *except where an individual leaves employment to accompany a spouse, who is a member of the armed*  
71 *services, to a new military assignment from which the individual's place of employment is not*  
72 *reasonably accessible.* An individual shall not be deemed to have voluntarily left work solely because  
73 the separation was in accordance with a seniority-based policy.

74 2. a. For any week benefits are claimed until he has performed services for an employer (i) during  
75 ~~thirty~~30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes  
76 totally or partially separated from such employment, if the Commission finds such individual is  
77 unemployed because he has been discharged for misconduct connected with his work.

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

79 (1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such  
80 in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such test was conducted at the direction of his  
81 employer in conjunction with the employer's administration and enforcement of a known workplace drug  
82 policy. Such test shall have been performed, and a sample collected, in accordance with scientifically  
83 recognized standards by a laboratory accredited by the United States Department of Health and Human  
84 Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or  
85 the equivalent. The Commission may consider evidence of mitigating circumstances in determining  
86 whether misconduct occurred.

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

92 3. a. If it is determined by the Commission that such individual has failed, without good cause, either  
93 to apply for available, suitable work when so directed by the employment office or the Commission or  
94 to accept suitable work when offered him. The disqualification shall commence with the week in which  
95 such failure occurred, and shall continue for the period of unemployment next ensuing until he has  
96 performed services for an employer (i) during ~~thirty~~30 days, whether or not such days are consecutive,  
97 or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

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

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

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

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

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

109 d. No individual shall be qualified for benefits during any week that such individual, in connection  
110 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,  
111 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is (i) required as a  
112 condition of employment and (ii) performed, and a sample is collected, in accordance with scientifically  
113 recognized standards by a laboratory accredited by the United States Department of Health and Human  
114 Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or  
115 the equivalent. The disqualification shall commence with the week in which such a test was conducted,  
116 and shall continue for the period of unemployment next ensuing until he has performed services for an  
117 employer (i) during ~~thirty~~ 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and  
118 subsequently becomes totally or partially separated from such employment.

119 4. For ~~fifty-two~~ 52 weeks, beginning with the date of the determination or decision, if the  
120 Commission finds that such individual, within ~~thirty-six~~36 calendar months immediately preceding such  
121 determination or decision, has made a false statement or representation knowing it to be false, or has

122 knowingly failed to disclose a material fact, to obtain or increase any benefit or payment under this title,  
123 the unemployment compensation of any other state, or any other program of the federal government  
124 which is administered in any way under this title, either for himself or any other person. Additionally,  
125 such individual shall be ineligible for benefits until he has repaid the Commission the sum which has  
126 been fraudulently obtained.

127 5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his  
128 release from prison or jail until he has performed services for an employer for (i) ~~thirty~~ 30 days,  
129 whether or not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or  
130 partially separated from such employment.