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## HOUSE BILL NO. 2371

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact § 60.2-618 of the Code of Virginia, relating to unemployment compensation; misconduct; chronic absenteeism.

Patrons—Bryant; Senator: Newman

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 30 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 30 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 30 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 test was conducted at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such 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. 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 willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(4) *An employee's chronic absenteeism. For the purposes of this subdivision:*

"Absence" shall not include health-related absences for which the employee could not reasonably obtain pre-approval from the employer.

"Chronic absenteeism" means (i) one or more unapproved absences in a single pay period or (ii) one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

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 30 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

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59 consider the degree of risk involved to his health, safety and morals, his physical fitness and prior  
60 training, his experience, his length of unemployment and the accessibility of the available work from his  
61 residence.

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

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

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

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

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

79 4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds  
80 that such individual, within 36 calendar months immediately preceding such determination or decision,  
81 has made a false statement or representation knowing it to be false, or has knowingly failed to disclose  
82 a material fact, to obtain or increase any benefit or payment under this title, the unemployment  
83 compensation of any other state, or any other program of the federal government which is administered  
84 in any way under this title, either for himself or any other person. Additionally, such individual shall be  
85 ineligible for benefits until he has repaid the Commission the sum that has been fraudulently obtained.

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

90 6. If such separation arose as a condition of the individual's parole or release from a custodial or  
91 penal institution and such individual was participating in the Diversion Center Incarceration Program  
92 pursuant to § 19.2-316.3.