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## HOUSE BILL NO. 1349

Offered January 9, 2008

Prefiled January 9, 2008

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 spouse.*

Patron—Barlow

Referred to Committee on Commerce and Labor

**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 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) 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 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 in connection with an international conflict 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;

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

8. An individual who was unable to work at his regular employment due to a disaster for which the

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59 Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of  
60 the employer's business. In no case shall more than four weeks of benefit charges be waived; or

61 9. *An individual who leaves employment to accompany a spouse to the location of the spouse's new*  
62 *place of employment, from which location the individual's place of employment is not reasonably*  
63 *accessible, when (i) the spouse is a minister, priest, rabbi, or accredited practitioner of any religious*  
64 *organization or denomination usually referred to as a church and (ii) the church has involuntarily*  
65 *reassigned the spouse to serve a congregation in such new location.*

66 § 60.2-618. Disqualification for benefits.

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

69 1. For any week benefits are claimed until he has performed services for an employer (i) during 30  
70 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally  
71 or partially separated from such employment, if the Commission finds such individual is unemployed  
72 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not  
73 include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily  
74 leaving work with an employer to accompany or to join his or her spouse in a new locality, *except*  
75 *where an individual leaves employment to accompany a spouse to the location of the spouse's new place*  
76 *of employment, from which location the individual's place of employment is not reasonably accessible,*  
77 *when (i) the spouse is a minister, priest, rabbi, or accredited practitioner of any religious organization*  
78 *or denomination usually referred to as a church and (ii) the church has involuntarily reassigned the*  
79 *spouse to serve a congregation in such new location.* An individual shall not be deemed to have  
80 voluntarily left work solely because the separation was in accordance with a seniority-based policy.

81 2. a. For any week benefits are claimed until he has performed services for an employer (i) during  
82 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes  
83 totally or partially separated from such employment, if the Commission finds such individual is  
84 unemployed because he has been discharged for misconduct connected with his work.

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

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

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

99 (3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an  
100 employee of an employer licensed or certified by the Commonwealth, which violation would cause the  
101 employer to be sanctioned or have its license or certification suspended by the Commonwealth. The  
102 Commission may consider evidence of mitigating circumstances in determining whether misconduct  
103 occurred.

104 (4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or  
105 one or more unapproved absences following a written reprimand or warning relating to more than one  
106 unapproved absence. The Commission may consider evidence of mitigating circumstances in determining  
107 whether misconduct occurred.

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

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

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

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

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

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

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

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

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

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

149 **2. That the provisions of this act enhancing the benefits payable to an individual pursuant to Title**  
150 **60.2 of the Code of Virginia may result in a net revenue loss to the Commonwealth of Virginia.**  
151 **Pursuant to § 30-19.03:1.2 of the Code of Virginia, the estimated amount of the annual net**  
152 **revenue loss is \$13,725.**