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SENATE BILL NO. 1495

Offered January 22, 2009

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.*

Patron—Locke

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 Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of

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59 the employer's business. In no case shall more than four weeks of benefit charges be waived; or

60 9. *An individual who leaves employment to accompany his spouse to the location of the spouse's new*
61 *duty assignment if: (i) the spouse is on active duty in the military or naval services of the United States;*
62 *(ii) the spouse's relocation to a new military-related assignment is pursuant to a permanent change of*
63 *station order; (iii) the location of the spouse's new duty assignment is not readily accessible from the*
64 *individual's place of employment; and (iv) the spouse's new duty assignment is located in a state that,*
65 *pursuant to statute, does not deem a person accompanying a military spouse as a person leaving work*
66 *voluntarily without good cause.*

67 § 60.2-618. Disqualification for benefits.

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

70 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
71 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
72 or partially separated from such employment, if the Commission finds such individual is unemployed
73 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not
74 include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily
75 leaving work with an employer to accompany or to join his or her spouse in a new locality, *except*
76 *where an individual leaves employment to accompany his or her spouse to the location of the spouse's*
77 *new duty assignment if (a) the spouse is on active duty in the military or naval services of the United*
78 *States; (b) the spouse's relocation to a new military-related assignment is pursuant to a permanent*
79 *change of station order; (c) the location of the spouse's new duty assignment is not readily accessible*
80 *from the individual's place of employment; and (d) the spouse's new duty assignment is located in a*
81 *state that, pursuant to statute, does not deem a person accompanying a military spouse as a person*
82 *leaving work voluntarily without good cause.* An individual shall not be deemed to have voluntarily left
83 work solely because the separation was in accordance with a seniority-based policy.

84 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
85 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes
86 totally or partially separated from such employment, if the Commission finds such individual is
87 unemployed because he has been discharged for misconduct connected with his work.

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

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

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

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

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

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

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

121 residence.

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

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

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

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

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

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

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

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

155 **2. That the provisions of this act enhancing the benefits payable to an individual pursuant to Title**
156 **60.2 may result in a net revenue loss to the Commonwealth of Virginia. Pursuant to § 30-19.03:1.2,**
157 **the estimated amount of the annual net revenue loss is \$2,250.**