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## SENATE BILL NO. 1495

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor  
on March 30, 2009)

(Patron Prior to Substitute—Senator Locke)

A *BILL to amend and reenact §§ 60.2-528, 60.2-612, and 60.2-618 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 60.2-613.1, relating to unemployment compensation; voluntarily leaving employment to accompany military spouse; eligibility of certain individuals for benefits.*

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

**1. That §§ 60.2-528, 60.2-612, and 60.2-618 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 60.2-613.1, 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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60 Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of  
61 the employer's business. In no case shall more than four weeks of benefit charges be waived; or

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

70 § 60.2-612. Benefit eligibility conditions.

71 An unemployed individual shall be eligible to receive benefits for any week only if the Commission  
72 finds that:

73 1. He has, in the highest two quarters of earnings within his base period, been paid wages in  
74 employment for employers that are equal to not less than the lowest amount appearing in Column A of  
75 the "Benefit Table" appearing in § 60.2-602 on the line which extends through Division C and on which  
76 in Column B of the "Benefit Table" appears his weekly benefit amount. Such wages shall be earned in  
77 not less than two quarters.

78 2. a. His total or partial unemployment is not due to a labor dispute in active progress or to  
79 shutdown or start-up operations caused by such dispute which exists (i) at the factory, establishment, or  
80 other premises, including a vessel, at which he is or was last employed, or (ii) at a factory,  
81 establishment or other premises, including a vessel, either within or without this Commonwealth, which  
82 (a) is owned or operated by the same employing unit which owns or operates the premises at which he  
83 is or was last employed and (b) supplies materials or services necessary to the continued and usual  
84 operation of the premises at which he is or was last employed. This subdivision shall not apply if it is  
85 shown to the satisfaction of the Commission that:

86 (1) He is not participating in or financing or directly interested in the labor dispute; and

87 (2) He does not belong to a grade or class of workers of which, immediately before the  
88 commencement of the labor dispute, there were members employed at the premises, including a vessel,  
89 at which the labor dispute occurs, any of whom are participating in or financing or directly interested in  
90 the dispute.

91 b. If separate branches of work which are commonly conducted as separate businesses at separate  
92 premises are conducted in separate departments of the same premises, each such department shall, for  
93 the purposes of this subdivision, be deemed to be a separate factory, establishment or other premises.  
94 Membership in a union, or the payment of regular dues to a bona fide labor organization, however, shall  
95 not alone constitute financing a labor dispute.

96 3. He is not receiving, has not received or is not seeking unemployment benefits under an  
97 unemployment compensation law of any other state or of the United States; however, if the appropriate  
98 agency of such other state or of the United States finally determines that he is not entitled to such  
99 unemployment benefits, this subdivision shall not apply.

100 4. He is not on a bona fide paid vacation. If an individual is paid vacation pay for any week in an  
101 amount less than the individual's weekly benefit amount his eligibility for benefits shall be computed  
102 under the provisions of § 60.2-603.

103 5. He has registered for work and thereafter has continued to report at an employment office in  
104 accordance with such regulations as the Commission may prescribe. The Commission may, by  
105 regulation, waive or alter either or both of the requirements of this subdivision for certain types of cases  
106 when it finds that compliance with such requirements would be oppressive, or would be inconsistent  
107 with the purposes of this title.

108 6. He has made a claim for benefits in accordance with regulations the Commission may prescribe.

109 7. a. He is able to work, is available for work, and is actively seeking and unable to obtain suitable  
110 work. Every claimant who is totally unemployed shall report to the Commission the names of employers  
111 contacted each week in his effort to obtain work. This information may be subject to employer  
112 verification by the Commission through a program designed for that purpose. The Commission may  
113 determine that registration by a claimant with the Virginia State Job Service may constitute a valid  
114 employer contact and satisfy the search for work requirement of this subsection in labor market areas  
115 where job opportunities are limited. The Commission may determine that an individual, whose usual and  
116 customary means of soliciting work in his occupation is through contact with a single hiring hall which  
117 makes contacts with multiple employers on behalf of the claimant, meets the requirement that he be  
118 actively seeking and unable to obtain suitable work by contacting that hiring hall alone. In areas of high  
119 unemployment, as determined by the Commission, the Commission has the authority to adjust the  
120 requirement that he be actively seeking and unable to obtain suitable work.

121 b. An individual who leaves the normal labor market area of the individual for the major portion of

any week is presumed to be unavailable for work within the meaning of this section. This presumption may be overcome if the individual establishes to the satisfaction of the Commission that the individual has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies.

c. An individual whose type of work is such that it is performed by individuals working two or more shifts in a 24-hour period shall not be deemed unavailable for work if the individual is currently enrolled in one or more classes of education related to employment or is continuing in a certificate or degree program at an institution of higher education, provided that the enrollment would only limit the individual's availability for one shift and the individual is otherwise available to work any of the other shifts.

d. *An individual who was employed part-time during at least one-half of the weeks of work in the individual's base period shall be deemed to satisfy the requirements that he be available for work and actively seeking and unable to obtain suitable work if the individual is available for and actively seeking work that is comparable to the individual's part-time work experience in the base period.*

8. He has given notice of resignation to his employer and the employer subsequently made the termination of employment effective prior to the date of termination as given in the notice, but in no case shall unemployment compensation benefits awarded under this subdivision exceed two weeks; provided, that the claimant could not establish good cause for leaving work pursuant to § 60.2-618 and was not discharged for misconduct as provided in § 60.2-618.

9. Beginning January 6, 1991, he has served a waiting period of one week during which he was eligible for benefits under this section in all other respects and has not received benefits, except that only one waiting week shall be required of such individual within any benefit year. For claims filed effective November 28, 1999, and after, this requirement shall be waived for any individual whose unemployment was caused by his employer terminating operations, closing its business or declaring bankruptcy without paying the final wages earned as required by § 40.1-29 of the Code of Virginia. Notwithstanding any other provision of this title, if an employer who terminates operations, closes its business or declares bankruptcy pays an individual his final wages after the period of time prescribed by § 40.1-29 of the Code of Virginia, such payment shall not be offset against the benefits the individual was otherwise entitled to receive and shall not, under any circumstances, cause such individual to be declared overpaid benefits.

10. He is not imprisoned or confined in jail.

11. He participates in reemployment services, such as job search assistance services, if he has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the Commission, unless the Commission determines that (i) such claimant has completed such services or (ii) there is good cause for such claimant's failure to participate in such services.

§ 60.2-613.1. *Additional benefits while in approved training.*

A. *An individual who has exhausted his eligibility for unemployment benefits, including extended benefits under §§ 60.2-610 and 60.2-611 or any federal emergency unemployment compensation program, and who is enrolled in and making satisfactory progress in either a state-approved training program or a job-training program authorized under the Workforce Investment Act of 1998, shall be eligible to receive up to 26 weeks of additional benefits provided that (i) the training is designed to prepare the individual for entry into a high demand occupation and (ii) the individual was:*

1. *Separated from a declining occupation; or*

2. *Involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.*

B. *No otherwise eligible individual shall be denied additional benefits during training under this section by reason of the application of the provisions of subdivision 7 d of § 60.2-612 relating to availability for work, or the provisions of subdivision 3 of § 60.2-618 relating to failure to apply for, or a refusal to accept, suitable work.*

C. *Any additional benefits that are payable pursuant to subsection A shall be reduced dollar-for-dollar for a week in which the individual is also receiving similar stipends or other training allowances that can be used for non-training purposes. As used in this subsection, "similar stipends or other training allowances" mean discretionary use, cash-in-hand payments available to the individual to be used as the individual sees fit, but does not mean direct or indirect compensation for training costs such as tuition, books, and supplies. No additional training benefit will be paid where such stipend is equal to or greater than the individual's weekly benefit amount.*

D. *For the purpose of this section the term "state-approved training programs" means a training program approved by the Commission pursuant to § 60.2-613 and 16 VAC 5-60-40.*

§ 60.2-618. Disqualification for benefits.

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

185 1. For any week benefits are claimed until he has performed services for an employer (i) during 30  
186 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally  
187 or partially separated from such employment, if the Commission finds such individual is unemployed  
188 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not  
189 include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily  
190 leaving work with an employer to accompany or to join his or her spouse in a new locality, *except*  
191 *where an individual leaves employment to accompany his or her spouse to the location of the spouse's*  
192 *new duty assignment if (a) the spouse is on active duty in the military or naval services of the United*  
193 *States; (b) the spouse's relocation to a new military-related assignment is pursuant to a permanent*  
194 *change of station order; (c) the location of the spouse's new duty assignment is not readily accessible*  
195 *from the individual's place of employment; and (d) except for members of the Virginia National Guard*  
196 *relocating to a new assignment within the Commonwealth, the spouse's new duty assignment is located*  
197 *in a state that, pursuant to statute, does not deem a person accompanying a military spouse as a person*  
198 *leaving work voluntarily without good cause. An individual shall not be deemed to have voluntarily left*  
199 *work solely because the separation was in accordance with a seniority-based policy.*

200 2. a. For any week benefits are claimed until he has performed services for an employer (i) during  
201 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes  
202 totally or partially separated from such employment, if the Commission finds such individual is  
203 unemployed because he has been discharged for misconduct connected with his work.

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

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

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

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

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

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

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

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

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

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

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

d. No individual shall be qualified for benefits during any week that such individual, in connection with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition of employment and (i) performed, and a sample is 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, or (ii) a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The disqualification shall commence with the week in which such a test was conducted, 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.

*e. No individual who is authorized to be available only for part-time work under the provisions of subdivision 7 d of § 60.2-612 shall be denied benefits for refusing an offer of full-time employment.*

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

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

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

**2. That the provisions of this act enhancing the benefits payable to an individual pursuant to Title 60.2 may result in a net revenue loss to the Commonwealth of Virginia. Pursuant to § 30-19.03:1.2, the estimated amount of the annual net revenue loss is \$52,800.**

**3. That the provisions of this act that amend § 60.2-528 and that amend subdivision 1 of § 60.2-618 shall become effective if the federal government appropriates adequate funds specifically for the purpose of paying benefits to employees who would be made eligible for unemployment benefits pursuant to such provisions of this act.**