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SENATE BILL NO. 239

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 30-19.03:1.2, 60.2-528, and 60.2-618, as it is currently effective and as it may become effective, 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 benefits.

Patrons—Watkins, Locke, Puckett and Reynolds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-19.03:1.2, 60.2-528, and 60.2-618, as it is currently effective and as it may become effective, 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:

§ 30-19.03:1.2. Unemployment compensation bills affecting net revenues of the Commonwealth.

A. The Virginia Employment Commission, in consultation with the Department of Planning and Budget, shall prepare a statement reflecting the potential revenue losses, in the form of decreased tax revenues, attributable to projected impact on the solvency level of the unemployment trust fund and the average increase in state unemployment tax liability of employers on a per-employee basis over the ensuing eight years, that would result from the enactment of any bill that enhances the benefits payable to an individual pursuant to Title 60.2.

B. No bill enhancing the benefits payable to an individual pursuant to Title 60.2 shall be considered by the General Assembly at a regular session unless the bill contains a revenue loss statement prepared in accordance with subsection A as a second or final enactment clause in the bill.

C. For the purposes of this section, legislation "enhancing the benefits payable to a claimant" includes any legislation that would facilitate the receipt, or increase the amount, of unemployment compensation benefits that an otherwise qualified claimant is eligible to receive on an annual basis.

§ 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

59 believing such employment to be permanent;

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

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

65 5. An individual hired to replace a member of the Reserve of the United States Armed Forces or the
66 National Guard called into active duty in connection with an international conflict and whose
67 employment is terminated concurrent with and because of that member's return from active duty;

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

70 7. An individual participating as an inmate in (i) state or local work release programs pursuant to
71 § 53.1-60 or 53.1-131; (ii) community residential programs pursuant to §§ 53.1-177, 53.1-178, and
72 53.1-179; or (iii) any similar work release program, whose separation from work arose from conditions
73 of release or parole from such program;

74 8. An individual who was unable to work at his regular employment due to a disaster for which the
75 Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of
76 the employer's business. In no case shall more than four weeks of benefit charges be waived; or

77 9. (Contingent effective date - see Editor's note.) An individual who leaves *separates* employment to
78 accompany his spouse to the location of the spouse's new duty assignment if: (i) the spouse is on active
79 duty in the military or naval services of the United States; (ii) the spouse's relocation to a new
80 military-related assignment is pursuant to a permanent change of station order; (iii) the location of the
81 spouse's new duty assignment is not readily accessible from the individual's place of employment; and
82 (iv) the spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a
83 person accompanying a military spouse as a person leaving work voluntarily without good cause if that
84 separation is for any compelling family reason. For purposes of this subdivision:

85 a. "Compelling family reason" means the following: (i) domestic violence, verified by such
86 reasonable and confidential documentation as the Commission may require, that causes the individual
87 reasonably to believe that such individual's continued employment would jeopardize the safety of the
88 individual or of any member of the individual's immediate family; (ii) the illness or disability of a
89 member of the individual's immediate family; or (iii) the need for the individual to accompany such
90 individual's spouse (a) to a place from which it is impractical for such individual to commute and (b)
91 due to a change in location of the spouse's employment; and

92 b. "Immediate family member" means an individual's spouse, parents, and children under the age of
93 18 years.

94 § 60.2-613.1. Additional benefits while in approved training.

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

101 1. Separated from a declining occupation; or

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

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

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

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

117 § 60.2-618. (Contingent expiration date.) Disqualification for benefits.

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

120 1. For any week benefits are claimed until he has performed services for an employer (i) during 30

121 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
 122 or partially separated from such employment, if the Commission finds such individual is unemployed
 123 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not
 124 include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily
 125 leaving work with an employer to accompany or to join ~~his or her~~ *the individual's* spouse in a new
 126 locality, *except where the individual's leaving employment to accompany such individual's spouse*
 127 *constitutes a compelling family reason pursuant to clause (iii) of subdivision C 9 of § 60.2-528.* An
 128 individual shall not be deemed to have voluntarily left work solely because the separation was in
 129 accordance with a seniority-based policy.

130 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
 131 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes
 132 totally or partially separated from such employment, if the Commission finds such individual is
 133 unemployed because he has been discharged for misconduct connected with his work.

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

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

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

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

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

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

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

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

170 (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
 171 (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the
 172 individual than those prevailing for similar work in the locality; or

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

175 d. No individual shall be qualified for benefits during any week that such individual, in connection
 176 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,
 177 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition
 178 of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized
 179 standards by a laboratory accredited by the United States Department of Health and Human Services, or
 180 the College of American Pathology, or the American Association for Clinical Chemistry, or the
 181 equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in

182 accordance with the employer's bona fide drug policy. The disqualification shall commence with the
183 week in which such a test was conducted, and shall continue for the period of unemployment next
184 ensuing until he has performed services for an employer (i) during 30 days, whether or not such days
185 are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such
186 employment.

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

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

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

201 § 60.2-618. (~~Contingent effective date.~~) Disqualification for benefits.

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

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207 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not
208 include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily
209 leaving work with an employer to accompany or to join his or her *such individual's* spouse in a new
210 locality, except where ~~an individual leaves the individual's leaving~~ employment to accompany his or her
211 spouse to the location of the spouse's new duty assignment if (a) the spouse is on active duty in the
212 military or naval services of the United States; (b) the spouse's relocation to a new military-related
213 assignment is pursuant to a permanent change of station order; (c) the location of the spouse's new duty
214 assignment is not readily accessible from the individual's place of employment; and (d) except for
215 members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the
216 spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person
217 accompanying a military spouse as a person leaving work voluntarily without good cause *such*
218 *individual's spouse constitutes a compelling family reason pursuant to clause (iii) of subdivision C 9 of*
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242 employer to be sanctioned or have its license or certification suspended by the Commonwealth. The
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257 training, his experience, his length of unemployment and the accessibility of the available work from his
258 residence.

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

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

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

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286 release from prison or jail until he has performed services for an employer for (i) 30 days, whether or
287 not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated
288 from such employment.

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

292 **2. That the provisions of this act enhancing the benefits payable to an individual pursuant to Title**
293 **60.2 may result in a net revenue loss to the Commonwealth of Virginia. Pursuant to**
294 **§ 30-19.03:1.2, the estimated amount of the annual net revenue loss is \$53,588.**

295 **3. That the third enactment of Chapter 878 of the 2009 Acts of Assembly is repealed.**