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SENATE BILL NO. 239

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 1, 2010)

(Patrons Prior to Substitute—Senators Watkins, Locke [SB 666] and Puckett [SB 562])

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, to amend the Code of Virginia by adding a section numbered 60.2-613.1, and to repeal the third enactment of Chapter 878 of the 2009 Acts of Assembly, relating to unemployment compensation benefits.*

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 believing such employment to be permanent;

3. An individual with respect to any weeks in which benefits are claimed and received after such

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60 date as that individual refused to accept an offer of rehire by the employer because such individual was
61 in training with approval of the Commission pursuant to § 60.2-613;

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

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

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

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

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

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

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

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

93 § 60.2-613.1. Additional benefits while in approved training.

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

100 1. Separated from a declining occupation; or

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

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

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

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

116 § 60.2-618. (Contingent expiration date.) Disqualification for benefits.

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

119 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
120 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
121 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~~ *the individual's* spouse in a new locality, *except where the individual's leaving employment to accompany such individual's spouse constitutes a compelling family reason pursuant to subdivision C 9 of § 60.2-528.* 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, or shall have been a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. 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) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

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

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

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

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

(3) If as a condition of being employed the individual would be required to join a company union or 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

183 ensuing until he has performed services for an employer (i) during 30 days, whether or not such days
184 are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such
185 employment.

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

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

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

200 § 60.2-618. ~~(Contingent effective date.)~~ Disqualification for benefits.

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

203 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
204 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
205 or partially separated from such employment, if the Commission finds such individual is unemployed
206 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not
207 include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily
208 leaving work with an employer to accompany or to join ~~his or her~~ *such individual's* spouse in a new
209 locality, except where ~~an individual leaves the individual's leaving~~ employment to accompany ~~his or her~~
210 spouse to the location of the spouse's new duty assignment if (a) the spouse is on active duty in the
211 military or naval services of the United States; (b) the spouse's relocation to a new military-related
212 assignment is pursuant to a permanent change of station order; (c) the location of the spouse's new duty
213 assignment is not readily accessible from the individual's place of employment; and (d) except for
214 members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the
215 spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person
216 accompanying a military spouse as a person leaving work voluntarily without good cause *such*
217 *individual's spouse constitutes a compelling family reason pursuant to subdivision C 9 of § 60.2-528.* An
218 individual shall not be deemed to have voluntarily left work solely because the separation was in
219 accordance with a seniority-based policy.

220 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
221 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes
222 totally or partially separated from such employment, if the Commission finds such individual is
223 unemployed because he has been discharged for misconduct connected with his work.

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

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

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

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

244 (4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or

one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

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

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

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

(3) If as a condition of being employed the individual would be required to join a company union or 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.

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 \$53,588.

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