

10100663D

HOUSE BILL NO. 252

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact §§ 60.2-528 and 60.2-633 of the Code of Virginia, relating to waiving collection of certain overpayments of unemployment compensation benefits.

Patrons—Merricks and Armstrong; Senator: Hurt

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 60.2-528 and 60.2-633 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;

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

INTRODUCED

HB252

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

68 10. *An individual with respect to any overpayment of benefits paid to the individual if the*
69 *individual's obligation to repay the overpayment is waived as provided in subsection D of § 60.2-633.*

70 § 60.2-633. Receiving benefits to which not entitled.

71 A. Any person who has received any sum as benefits under this title to which he was not entitled
72 shall be liable to repay such sum to the Commission, *unless waived as provided in subsection D.* In the
73 event the claimant does not refund the overpayment, the Commission shall deduct from any future
74 benefits such sum payable to him under this title ~~unless overpayment occurred due to administrative~~
75 ~~error, in which case the Commission shall deduct only fifty percent of the payable amount for any~~
76 ~~future week of benefits claimed,~~ rounded down to the next lowest dollar until the overpayment is
77 satisfied. ~~Administrative error shall not include decisions reversed in the appeals process. However, if (i)~~
78 ~~an overpayment occurred because of an administrative error by the Commission, (ii) the obligation to~~
79 ~~repay the overpayment is not waived as provided in subsection D, and (iii) the claimant does not refund~~
80 ~~the overpayment, the Commission shall deduct from any future benefits only 50 percent of the amount~~
81 ~~payable to the individual under this title for any future week of benefits claimed.~~ In addition, the
82 overpayment may be collectible by civil action in the name of the Commission. Amounts collected in
83 this manner may be subject to an interest charge as prescribed in § 58.1-15 from the date of judgment
84 and may be subject to fees and costs. Collection activities for any benefit overpayment established of
85 five dollars or less may be suspended. The Commission may, for good cause, determine as uncollectible
86 and discharge from its records any benefit overpayment which remains unpaid after the expiration of
87 seven years from the date such overpayment was determined, or immediately upon the death of such
88 person or upon his discharge in bankruptcy occurring subsequently to the determination of overpayment.
89 Any existing overpayment balance not equal to an even dollar amount shall be rounded to the next
90 lowest even dollar amount.

91 B. The Commission is authorized to accept repayment of benefit overpayments by use of a credit
92 card. The Virginia Employment Commission shall add to such payment a service charge for the
93 acceptance of such card. Such service charge shall not exceed the percentage charged to the Virginia
94 Employment Commission for use of such card.

95 C. Final orders of the Commission with respect to benefit overpayments may be recorded, enforced
96 and satisfied as orders or decrees of a circuit court upon certification of such orders by the
97 Commissioner as may be appropriate.

98 D. *The Commission shall waive and discharge from its records the obligation of an individual to*
99 *repay an overpayment if:*

100 1. *The individual requests such waiver within 30 days after the individual receives notice that the*
101 *Commission has determined the individual has received an overpayment;*

102 2. *The overpayment occurred solely because of an administrative error by the Commission;*

103 3. *The Commission failed to demand that the individual repay the overpayment within six months*
104 *after the date of the overpayment; and*

105 4. *Requiring the individual to repay the overpayment would be inequitable.*

106 *In addition, the Commission shall be authorized to waive and discharge from its records any*
107 *obligation, or a portion thereof, of an individual to repay an overpayment that occurred solely or*
108 *partially because of an administrative error by the Commission, and if the overpayment was only*
109 *partially because of an administrative error by the Commission no false representation or failure to*
110 *disclose a material fact by the individual contributed to the overpayment, if the Commission determines*
111 *that recovery of the overpayment or a portion thereof would be inequitable.*

112 *In determining whether requiring the individual to repay an overpayment would be inequitable, the*
113 *Commission shall consider, among such other facts as it deems relevant, whether repayment would*
114 *cause economic hardship to the individual. In determining whether repayment would cause economic*
115 *hardship, the Commission may consider, among other relevant factors, whether the individual's family's*
116 *Virginia adjusted gross income exceeds 100 percent of the poverty guideline amount corresponding to a*
117 *household of an equal number of persons as listed in the most recent poverty guidelines for the 48*
118 *contiguous states and the District of Columbia published annually in the Federal Register by the U.S.*
119 *Department of Health and Human Services.*

120 *As used in this section, administrative error shall not include decisions reversed in the appeals*

- 121** *process. In determining whether an overpayment occurred because of an administrative error, the*
122 *Commission shall consider the capacity of the individual to recognize an obvious payment error.*