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SENATE BILL NO. 1401

Senate Amendments in [] — February 8, 2011

A BILL to amend and reenact §§ 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 Acts of Assembly of 2009, relating to unemployment compensation benefits.

Patron Prior to Engrossment—Senator McEachin

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, 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:

§ 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

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SB1401E

60 53.1-179; or (iii) any similar work release program, whose separation from work arose from conditions
61 of release or parole from such program;

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

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

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

80 b. "Immediate family member" means an individual's spouse, parents, and children under the age of
81 18 years.

82 § 60.2-613.1. Additional benefits while in approved training.

83 A. An individual who has exhausted his eligibility for unemployment benefits, including extended
84 benefits under §§ 60.2-610 and 60.2-611 or any federal emergency unemployment compensation
85 program, and who is enrolled in and making satisfactory progress in either a state-approved training
86 program or a job-training program authorized under the federal Workforce Investment Act of 1998 (P.L.
87 105-220), shall be eligible to receive up to 26 weeks of additional benefits provided that (i) the training
88 is designed to prepare the individual for entry into a high demand occupation and (ii) the individual
89 was:

90 1. Separated from a declining occupation; or

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

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

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

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

106 § 60.2-618. ~~(Contingent expiration date.)~~ Disqualification for benefits.

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

109 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
110 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
111 or partially separated from such employment, if the Commission finds such individual is unemployed
112 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not
113 include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily
114 leaving work with an employer to accompany or to join his or her the individual's spouse in a new
115 locality, except where the individual's leaving employment to accompany such individual's spouse
116 constitutes a compelling family reason pursuant to subdivision C 9 of § 60.2-528. An individual shall
117 not be deemed to have voluntarily left work solely because the separation was in accordance with a
118 seniority-based policy.

119 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
120 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes
121 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 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.

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

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

190 § 60.2-618. (~~Contingent effective date.~~) Disqualification for benefits.

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

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

210 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
211 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes
212 totally or partially separated from such employment, if the Commission finds such individual is
213 unemployed because he has been discharged for misconduct connected with his work.

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

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

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

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

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

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

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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.

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- (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 increase is [~~\$16,163~~ \$4,425].

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