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SENATE BILL NO. 1460

Offered January 21, 2011

A BILL to amend and reenact §§ 60.2-613 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 the establishment of a work-based training program for unemployed workers.

Patrons—Locke, Barker, Colgan, Deeds, Edwards, Herring, Houck, Howell, Lucas, Marsden, Marsh, McEachin, Miller, J.C., Northam, Puckett, Puller, Reynolds, Saslaw, Ticer and Whipple

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-613 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:

§ 60.2-613. Benefits not denied to individuals in training with approval of Commission.

A. No otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the Commission, including training under Section 134 of the Workforce Investment Act, nor shall such individual be denied benefits for any week in which he is in training with the approval of the Commission, including training under Section 134 of the Workforce Investment Act, by reason of the application of the provisions in subdivision 7 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.

B. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training approved under § 2296 of the Trade Act (19 U.S.C. § 2101 et seq.), nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work.

C. For purposes of this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act.

D. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he is participating in workforce skills enhancement training under a plan approved by the Commission pursuant to § 60.2-613.1.

§ 60.2-613.1. Workforce skills enhancement training program.

A. As used in this section, unless the context requires a different meaning:

"Approved plan" means an employer's workforce skills enhancement training plan that meets the requirements of this section.

"Eligible worker" means an individual who:

1. Is unemployed;

2. Is eligible for benefits under this title, including extended or emergency benefits, and is not disqualified for such benefits under this chapter; and

3. Has been employed at work paying less than 110 percent of the minimum wage established under Article 1.1 (§ 40.1-28.8 et seq.) of Chapter 3 of Title 40.1 during his entire base period.

"Workforce skills enhancement training" means training and education that provides occupation-specific skills. "Workforce skills enhancement training" does not include programs of instruction for an individual that are primarily intended to lead to a baccalaureate or higher degree or training intended to prepare individuals for employment in occupations that require a baccalaureate or higher degree.

B. Eligible workers participating in workforce skills enhancement training may not be denied unemployment benefits solely because they are attending such training. Eligible workers who are participating in workforce skills enhancement training may not be denied unemployment benefits for refusing to accept work if the work offered interferes with the eligible worker's training schedule. Notwithstanding provisions of this title relating to availability for work and actively seeking work, eligible workers who are enrolled or participating in workforce skills enhancement training and who are otherwise eligible for unemployment insurance benefits are not ineligible for benefits because of

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58 attending such training.

59 C The Commission shall adopt regulations necessary for the administration of this section, including
60 procedures for approval, periodic review for continued approval, and disapproval of workforce skills
61 enhancement training for eligible workers. Such regulations shall:

62 1. Allow eligible workers who have registered for employment services to receive workforce skills
63 enhancement training from a potential employer for a maximum of 24 hours per week for up to six
64 weeks;

65 2. Require employers seeking to offer workforce skills enhancement training to submit a plan to the
66 Commission for conducting workforce skills enhancement training that meets the requirements of this
67 section;

68 3. Permit eligible workers to qualify for up to \$600 in training stipends, based on an average of
69 \$100 weekly, to help defray training-related costs such as child care and transportation, provided that
70 the payment of such stipends shall be subject to the appropriation of funds for such purpose;

71 4. Provide that upon an eligible worker's completion of workforce skills enhancement training, the
72 worker shall receive a training certificate for job skills and may be considered for employment;

73 5. Provide that the Commonwealth shall reimburse employers for the incremental increase in the
74 employers' costs of workers' compensation insurance that directly results from the employer's provision
75 of workforce skills enhancement training to eligible workers, provided that the payment of such
76 reimbursements shall be subject to the appropriation of funds for such purpose;

77 6. Provide that a plan for workforce skills enhancement training shall not be approved unless:

78 a. The training, even though it includes actual operation of the facilities of the employer, is similar
79 to what would be given in a vocational school or academic educational instruction;

80 b. The training is for the benefit of the eligible worker;

81 c. Eligible workers trainees do not displace regular employees, but work under their close
82 observation;

83 d. The employer that provides the training derives no immediate advantage from the activities of the
84 eligible worker trainees, and on occasion the employer's operations may actually be impeded;

85 e. The eligible worker trainees are not entitled to a job at the conclusion of the training period; and

86 f. The employer and the eligible worker trainees understand that the trainees are not entitled to
87 wages for the time spent in training; and

88 7. Ensure that the participation by the eligible employee in an approved plan for workforce skills
89 enhancement training does not subject the employer to the requirements of the federal Fair Labor
90 Standards Act (29 U.S.C. § 201 et seq.) with respect to the eligible employee.

91 § 60.2-618. (Contingent expiration date) Disqualification for benefits.

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

94 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
95 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
96 or partially separated from such employment, if the Commission finds such individual is unemployed
97 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not
98 include (i) (a) voluntarily leaving work with an employer to become self-employed or (ii) (b) voluntarily
99 leaving work with an employer to accompany or to join his or her spouse in a new locality. An
100 individual shall not be deemed to have voluntarily left work solely because the separation was in
101 accordance with a seniority-based policy.

102 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
103 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes
104 totally or partially separated from such employment, if the Commission finds such individual is
105 unemployed because he has been discharged for misconduct connected with his work.

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

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

116 (2) An employee's intentionally false or misleading statement of a material nature concerning past
117 criminal convictions made in a written job application furnished to the employer, where such statement
118 was a basis for the termination and the employer terminated the employee promptly upon the discovery
119 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; or

(4) *If an individual refuses to accept new work if the work offered interferes with the eligible worker's scheduled participation in workforce skills enhancement training under a plan approved by the Commission pursuant to § 60.2-613.1; however, an individual's participation in workforce skills enhancement training under such a plan shall not alter the requirement that the individual apply for suitable work.*

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)~~ (a) during 30 days, whether or not such days are consecutive, or ~~(ii)~~ (b) 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.

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

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

1. 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 left work voluntarily without good cause. As used in this chapter, "good cause" shall not include ~~(a)~~ (a) voluntarily leaving work with an employer to become self-employed or ~~(b)~~ (b) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality, except where an individual leaves employment to accompany his or her spouse to the location of the spouse's new duty assignment if ~~(1)~~ (1) the spouse is on active duty in the military or naval services of the United States; ~~(2)~~ (2) the spouse's relocation to a new military-related assignment is pursuant to a permanent change of station order; ~~(3)~~ (3) the location of the spouse's new duty assignment is not readily accessible from the individual's place of employment; and ~~(4)~~ (4) except for members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person accompanying a military spouse as a person leaving work voluntarily without good cause. 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; or

(4) If an individual refuses to accept new work if the work offered interferes with the eligible

worker's scheduled participation in workforce skills enhancement training under a plan approved by the Commission pursuant to § 60.2-613.1; however, an individual's participation in workforce skills enhancement training under such a plan shall not alter the requirement that the individual apply for suitable work.

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)~~ (a) during 30 days, whether or not such days are consecutive, or ~~(ii)~~ (b) 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.