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HOUSE BILL NO. 562

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact § 60.2-612 of the Code of Virginia, relating to the eligibility for unemployment benefits of individuals testing positive for the use of nonprescribed controlled substances.

Patrons—Marshall, D.W., Albo, Cole, Helsel, Hodges, Massie, Merricks, Morris, O'Bannon and Poindexter

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 60.2-612 of the Code of Virginia is amended and reenacted as follows:**

§ 60.2-612. Benefit eligibility conditions.

An unemployed individual shall be eligible to receive benefits for any week only if the Commission finds that:

1. He has, in the highest two quarters of earnings within his base period, been paid wages in employment for employers that are equal to not less than the lowest amount appearing in Column A of the "Benefit Table" appearing in § 60.2-602 on the line which extends through Division C and on which in Column B of the "Benefit Table" appears his weekly benefit amount. Such wages shall be earned in not less than two quarters.

2. a. His total or partial unemployment is not due to a labor dispute in active progress or to shutdown or start-up operations caused by such dispute which exists (i) at the factory, establishment, or other premises, including a vessel, at which he is or was last employed, or (ii) at a factory, establishment or other premises, including a vessel, either within or without this Commonwealth, which (a) is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed and (b) supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. This subdivision shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises, including a vessel, at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute.

b. If separate branches of work which are commonly conducted as separate businesses at separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment or other premises. Membership in a union, or the payment of regular dues to a bona fide labor organization, however, shall not alone constitute financing a labor dispute.

3. He is not receiving, has not received or is not seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; however, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this subdivision shall not apply.

4. He is not on a bona fide paid vacation. If an individual is paid vacation pay for any week in an amount less than the individual's weekly benefit amount his eligibility for benefits shall be computed under the provisions of § 60.2-603.

5. He has registered for work and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe. The Commission may, by regulation, waive or alter either or both of the requirements of this subdivision for certain types of cases when it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title.

6. He has made a claim for benefits in accordance with regulations the Commission may prescribe.

7. ~~a.~~ He is able to work, is available for work, and is actively seeking and unable to obtain suitable work. Every claimant who is totally unemployed shall report to the Commission the names of employers contacted each week in his effort to obtain work. This information may be subject to employer verification by the Commission through a program designed for that purpose. The Commission may determine that registration by a claimant with the Virginia State Job Service may constitute a valid employer contact and satisfy the search for work requirement of this subsection in labor market areas

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HB562

58 where job opportunities are limited. The Commission may determine that an individual, whose usual and
59 customary means of soliciting work in his occupation is through contact with a single hiring hall which
60 makes contacts with multiple employers on behalf of the claimant, meets the requirement that he be
61 actively seeking and unable to obtain suitable work by contacting that hiring hall alone. In areas of high
62 unemployment, as determined by the Commission, the Commission has the authority to adjust the
63 requirement that he be actively seeking and unable to obtain suitable work.

64 *In determining whether an individual is available or unavailable for work:*

65 b a. An individual who leaves the normal labor market area of the individual for the major portion
66 of any week is presumed to be unavailable for work within the meaning of this section. This
67 presumption may be overcome if the individual establishes to the satisfaction of the Commission that the
68 individual has conducted a bona fide search for work and has been reasonably accessible to suitable
69 work in the labor market area in which the individual spent the major portion of the week to which the
70 presumption applies.

71 e b. An individual whose type of work is such that it is performed by individuals working two or
72 more shifts in a 24-hour period shall not be deemed unavailable for work if the individual is currently
73 enrolled in one or more classes of education related to employment or is continuing in a certificate or
74 degree program at an institution of higher education, provided that the enrollment would only limit the
75 individual's availability for one shift and the individual is otherwise available to work any of the other
76 shifts.

77 c. *An individual shall not be deemed available for work until a representative of the Commission has
78 screened the individual to determine whether probable cause exists to believe such individual is engaged
79 in the use of a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et
80 seq.) of Title 54.1. Such screening shall utilize a standardized screening instrument developed by the
81 Commission together with the Department of Behavioral Health and Developmental Services. Screenings
82 shall be performed by a representative of the Commission at the time of application for benefits and
83 periodically thereafter but not more frequently than every six months. If a screening indicates that there
84 is reason to believe that the individual is engaged in the use of a nonprescribed controlled substance,
85 the Commission shall require a formal substance abuse assessment, which may include drug testing to
86 be performed in accordance with scientifically recognized standards by a laboratory accredited by the
87 United States Department of Health and Human Services, or the College of American Pathologists, or
88 the American Association for Clinical Chemistry, or the equivalent. Any individual who fails or refuses
89 to participate in a screening or assessment without good cause or who tests positive for the use of a
90 nonprescribed controlled substance shall be ineligible to receive benefits. Persons deemed ineligible for
91 benefits due to failure or refusal to participate in a screening or assessment or for testing positive for
92 the use of a nonprescribed controlled substance may reapply for benefits after six months have elapsed
93 from the date of ineligibility.*

94 8. He has given notice of resignation to his employer and the employer subsequently made the
95 termination of employment effective prior to the date of termination as given in the notice, but in no
96 case shall unemployment compensation benefits awarded under this subdivision exceed two weeks;
97 provided, that the claimant could not establish good cause for leaving work pursuant to § 60.2-618 and
98 was not discharged for misconduct as provided in § 60.2-618.

99 9. Beginning January 6, 1991, he has served a waiting period of one week during which he was
100 eligible for benefits under this section in all other respects and has not received benefits, except that
101 only one waiting week shall be required of such individual within any benefit year. For claims filed
102 effective November 28, 1999, and after, this requirement shall be waived for any individual whose
103 unemployment was caused by his employer terminating operations, closing its business or declaring
104 bankruptcy without paying the final wages earned as required by § 40.1-29 of the Code of Virginia.
105 Notwithstanding any other provision of this title, if an employer who terminates operations, closes its
106 business or declares bankruptcy pays an individual his final wages after the period of time prescribed by
107 § 40.1-29 of the Code of Virginia, such payment shall not be offset against the benefits the individual
108 was otherwise entitled to receive and shall not, under any circumstances, cause such individual to be
109 declared overpaid benefits.

110 10. He is not imprisoned or confined in jail.

111 11. He participates in reemployment services, such as job search assistance services, if he has been
112 determined to be likely to exhaust regular benefits and need reemployment services pursuant to a
113 profiling system established by the Commission, unless the Commission determines that (i) such
114 claimant has completed such services or (ii) there is good cause for such claimant's failure to participate
115 in such services.