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HOUSE BILL NO. 411

Offered January 13, 2016

Prefiled January 7, 2016

A BILL to amend and reenact §§ 60.2-612 and 60.2-618 of the Code of Virginia, relating to eligibility of certain individuals for unemployment compensation benefits.

 Patron—James

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 60.2-612 and 60.2-618 of the Code of Virginia are 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 where job opportunities are limited. The Commission may determine that an individual, whose usual and customary means of soliciting work in his occupation is through contact with a single hiring hall which

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59 makes contacts with multiple employers on behalf of the claimant, meets the requirement that he be
60 actively seeking and unable to obtain suitable work by contacting that hiring hall alone. In areas of high
61 unemployment, as determined by the Commission, the Commission has the authority to adjust the
62 requirement that he be actively seeking and unable to obtain suitable work.

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

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

75 d. *An individual who was employed part time during at least one-half of the weeks of work in the*
76 *individual's base period shall be deemed to satisfy the requirements that he be available for work and*
77 *actively seeking and unable to obtain suitable work if the individual is available for and actively seeking*
78 *work that is comparable to the individual's part-time work experience in the base period.*

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

84 9. Beginning January 6, 1991, he has served a waiting period of one week during which he was
85 eligible for benefits under this section in all other respects and has not received benefits, except that
86 only one waiting week shall be required of such individual within any benefit year. For claims filed
87 effective November 28, 1999, and after, this requirement shall be waived for any individual whose
88 unemployment was caused by his employer terminating operations, closing its business or declaring
89 bankruptcy without paying the final wages earned as required by § 40.1-29 of the Code of Virginia .
90 Notwithstanding any other provision of this title, if an employer who terminates operations, closes its
91 business or declares bankruptcy pays an individual his final wages after the period of time prescribed by
92 § 40.1-29 of the Code of Virginia, such payment shall not be offset against the benefits the individual
93 was otherwise entitled to receive and shall not, under any circumstances, cause such individual to be
94 declared overpaid benefits.

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

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

101 **§ 60.2-618. Disqualification for benefits.**

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

104 1. (Effective until January 1, 2021) For any week benefits are claimed until he has performed
105 services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240
106 hours, and subsequently becomes totally or partially separated from such employment, if the
107 Commission finds such individual is unemployed because he left work voluntarily without good cause.

108 If (a) at the time of commencing employment with such employing unit an individual is enrolled in
109 an accredited academic program of study provided by an institution of higher education for students that
110 have been awarded a baccalaureate degree, which academic program culminates in the awarding of a
111 master's, doctoral, or professional degree; (b) the individual's employment with such employing unit
112 commenced and ended during the period between spring and fall semesters of the academic program in
113 which the individual is enrolled; and (c) the individual returned to such academic program following his
114 separation from such employing unit, there shall be a rebuttable presumption that the individual left
115 work voluntarily.

116 As used in this chapter, "good cause" shall not include (1) voluntarily leaving work with an
117 employer to become self-employed or (2) voluntarily leaving work with an employer to accompany or to
118 join his or her spouse in a new locality, except where an individual leaves employment to accompany a
119 spouse to the location of the spouse's new duty assignment if (A) the spouse is on active duty in the
120 military or naval services of the United States; (B) the spouse's relocation to a new military-related

assignment is pursuant to a permanent change of station order; (C) the location of the spouse's new duty assignment is not readily accessible from the individual's place of employment; and (D) 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.

1. (Effective January 1, 2021) 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.

If (a) at the time of commencing employment with such employing unit an individual is enrolled in an accredited academic program of study provided by an institution of higher education for students that have been awarded a baccalaureate degree, which academic program culminates in the awarding of a master's, doctoral, or professional degree; (b) the individual's employment with such employing unit commenced and ended during the period between spring and fall semesters of the academic program in which the individual is enrolled; and (c) the individual returned to such academic program following his separation from such employing unit, there shall be a rebuttable presumption that the individual left work voluntarily.

As used in this chapter, "good cause" shall not include (1) voluntarily leaving work with an employer to become self-employed or (2) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality. 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.

(5) An employee's loss of or failure to renew a license or certification that is a requisite of the position held by the employee, provided the employer is not at fault for the employee's loss of or failure to renew the license or certification. 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.

182 b. In determining whether or not any work is suitable for an individual, the Commission shall
183 consider the degree of risk involved to his health, safety and morals, his physical fitness and prior
184 training, his experience, his length of unemployment and the accessibility of the available work from his
185 residence.

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

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

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

191 (3) If as a condition of being employed the individual would be required to join a company union or
192 to resign from or refrain from joining any bona fide labor organization.

193 d. No individual shall be qualified for benefits during any week that such individual, in connection
194 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,
195 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition
196 of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized
197 standards by a laboratory accredited by the United States Department of Health and Human Services, or
198 the College of American Pathology, or the American Association for Clinical Chemistry, or the
199 equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in
200 accordance with the employer's bona fide drug policy. The disqualification shall commence with the
201 week in which such a test was conducted, and shall continue for the period of unemployment next
202 ensuing until he has performed services for an employer (i) during 30 days, whether or not such days
203 are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such
204 employment.

205 e. *No individual who is authorized to be available only for part-time work under the provisions of*
206 *subdivision 7 d of § 60.2-612 shall be denied benefits for refusing an offer of full-time employment.*

207 4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds
208 that such individual, within 36 calendar months immediately preceding such determination or decision,
209 has made a false statement or representation knowing it to be false, or has knowingly failed to disclose
210 a material fact, to obtain or increase any benefit or payment under this title, the unemployment
211 compensation of any other state, or any other program of the federal government which is administered
212 in any way under this title, either for himself or any other person. Overpayments that have been
213 fraudulently obtained and any penalty assessed against the individual pursuant to § 60.2-636 shall be
214 recoverable as provided in § 60.2-633.

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

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

222 **2. That the provisions of this act enhance the benefits payable to an individual pursuant to Title**
223 **60.2 of the Code of Virginia. Pursuant to § 30-19.03:1.2 of the Code of Virginia, the Virginia**
224 **Employment Commission, in consultation with the Department of Planning and Budget, estimates**
225 **that over the ensuing eight years (i) the provisions of this act are projected to reduce the solvency**
226 **level of the Unemployment Trust Fund by an average of two percent in each of the eight years**
227 **and (ii) the projected average annual increase in state unemployment tax liability of employers on**
228 **a per employee basis that would result from the provisions of this act is \$6.28.**