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HOUSE BILL NO. 2040

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 25, 2021)

(Patrons Prior to Substitute—Delegates Hudson and Askew [HB 1977])

A *BILL to amend and reenact §§ 60.2-619 and 60.2-633 of the Code of Virginia, relating to unemployment compensation; continuation of benefits; repayment of overpayments.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-619 and 60.2-633 of the Code of Virginia are amended and reenacted as follows:

§ 60.2-619. Determinations and decisions by deputy; appeals therefrom.

A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim. On the basis of the facts found by him, the deputy shall either:

a. Determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission, which tribunal or Commission shall make its determination in accordance with the procedure described in § 60.2-620.

2. When the payment or denial of benefits will be determined by the provisions of subdivision 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to any appeal tribunal, which shall make its determination in accordance with the procedure described in § 60.2-620.

B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant and all subsequent employing units, and any reimbursable employing units ~~which~~ that may be liable for reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall not have any effect upon the claim for benefits. *If a claimant has had a determination of initial eligibility for benefits under this chapter, as evidenced by the issuance of compensation or waiting-week credit, payments shall continue, subject to a presumption of continued eligibility and in accordance with the terms of this subsection, until a determination is made that provides the claimant notice and an opportunity to be heard. When a question concerning continued eligibility for benefits arises, a determination shall be made as to whether it affects future weeks of benefits or only past weeks. With respect to future weeks, presumptive payment shall not be made until but no later than the end of the week following the week in which such issue arises, regardless of the type of issue. With respect to past weeks, presumptive payment shall be issued immediately, regardless of the type of issue. Notice shall be given to individuals who receive payments under such presumption that pending eligibility may affect their entitlement to the payment and may result in an overpayment that requires repayment.*

C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by mailing such notice to the claimant's last known address. In addition, notice of any determination ~~which~~ that involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be promptly given in the same manner to the most recent 30-day or 240-hour employing unit by whom the claimant was last employed and any subsequent employing unit which is a party. The Commission may dispense with the giving of notice of any determination to any employing unit, and such employing unit shall not be entitled to such notice if it has failed to respond timely or adequately to a written request of the Commission for information, as required by § 60.2-528.1, from which the deputy may have determined that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks.

D. Such determination or decision shall be final unless the claimant or any such employing unit files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or (iii) within 30 days after such notification was mailed to the last known address of an interstate claimant. For good cause shown, the 30-day period may be extended.

E. Benefits shall be paid promptly in accordance with a determination or redetermination under this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision, regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment

thereafter in accordance with such modifying or reversing redetermination or decision. If a decision of an appeal tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid until such time as a court decision has become final so that no further appeal can be taken. If an appeal is taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the employer under § 60.2-530 only when, and as of the date on which, as the result of an appeal, the courts finally determine that the Commission should have awarded benefits to the claimant or claimants involved in such appeal.

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

A. Any person who has received any sum as benefits under this title to which he was not entitled shall be liable to repay such sum to the Commission. For purposes of this section, "benefits under this title" includes benefits under an unemployment benefit program of the United States or of any other state. In the event the claimant does not refund the overpayment, the Commission shall deduct from any future benefits such sum payable to him under this title. *The Commission shall waive the requirement to repay the overpayment after an individual case review if (i) the overpayment was made without fault on the part of the individual and (ii) requiring repayment would be contrary to equity and good conscience.*

For the purposes of this section:

1. *An overpayment made "without fault on the part of the individual" shall include overpayments that (i) result from administrative error; (ii) are the result of inducement, solicitation, or coercion on the part of the employer; or (iii) result from the employer's failure to respond timely or adequately to the Commission's request for information, as required by § 60.2-528.1. An overpayment shall not be considered "without fault on the part of the individual" if such overpayment was the result of (a) a reversal in the appeals process, unless the employer failed to respond timely or adequately to the Commission's request for information regarding the individual's separation from employment; (b) a programming, technological, or automated system error not directly associated with an individual claim that results in erroneous payments to a group of individuals; or (c) fraud.*

2. *It shall be contrary to equity and good conscience if requiring repayment of an overpayment would deprive the individual of the income required to provide for basic necessities, including shelter, food, medicine, child care, or any other essential living expenses.*

However, if an overpayment of benefits under this chapter, but not under an unemployment benefit program of the United States or of any other state, occurred due to administrative error, B. For any overpayment where repayment is not forgiven, the Commission shall have the authority to negotiate the terms of repayment, which shall include (i) deducting up to 50 percent of the payable amount for any future week of benefits claimed, rounded down to the next lowest dollar until the overpayment is satisfied; (ii) forgoing collection of the payable amount until the recipient has found employment as defined in § 60.2-212; or (iii) determining and instituting an individualized repayment plan.

The Commission shall collect an overpayment of benefits under this chapter caused by administrative error only by offset against future benefits or a negotiated repayment plan; however, the Commission may institute any other method of collection if the individual fails to enter into or comply with the terms of the repayment plan. Administrative error shall not include decisions reversed in the appeals process. ~~In addition, the overpayment~~

Overpayments where the obligation to repay has not been waived may be collectible by civil action in the name of the Commission. Amounts collected in this manner may be subject to an interest charge as prescribed in § 58.1-15 from the date of judgment and may be subject to fees and costs. Collection activities for any benefit overpayment established of five dollars \$5 or less may be suspended. The Commission may, for good cause, determine as uncollectible and discharge from its records any benefit overpayment which remains unpaid after the expiration of seven years from the date such overpayment was determined, or immediately upon the death of such person or upon his discharge in bankruptcy occurring subsequently to the determination of overpayment. Any existing overpayment balance not equal to an even dollar amount shall be rounded to the next lowest even dollar amount.

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

D. *No determination with respect to benefit overpayments shall be issued until after a determination or decision that finds a claimant ineligible or disqualified for benefits previously paid has become final.*

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

2. **That the Virginia Employment Commission (the Commission) shall notify each person with an unpaid overpayment of benefits established for claim weeks paid commencing March 15, 2020, under Chapter 6 (§ 60.2-600 et seq.) of Title 60.2 of the Code of Virginia, or under an unemployment benefit program of the United States or any other state, that such individual may**

122 be entitled to a waiver of obligation to repay such overpayment and shall provide 30 days from
123 the date of such notification for the individual to request a waiver of repayment. For good cause
124 shown, the Commission may extend the 30-day period for requesting a waiver. The Commission
125 shall conduct an individualized review and adjudicate any request received in accordance with the
126 provisions of § 60.2-619 of the Code of Virginia, as amended by this act, and any individual who is
127 denied a waiver shall have the right to appeal as provided in subsection D of § 60.2-619 of the
128 Code of Virginia, as amended by this act. In ruling on any waiver request, the Commission shall
129 apply the provisions of Title 60.2 or, if applicable, the overpayment waiver provisions of any
130 unemployment compensation program of the United States.

131 3. That the provisions of this act that allow the waiver of any obligation to repay overpayments
132 established for the week commencing March 15, 2020, through the week commencing June 26,
133 2021, shall apply only to overpayment balances that remain outstanding as of July 1, 2021.
134 Amounts already paid or collected against such overpayments shall not be reimbursed to the
135 claimant, except for benefits paid under the Pandemic Unemployment Assistance program.

136 4. That notwithstanding any provision to the contrary, the Virginia Employment Commission may
137 suspend or forgo referring any overpayment established since March 15, 2020, to the collections
138 process established under § 2.2-4806 of the Code of Virginia. However, the authority to suspend or
139 forgo such referrals shall expire on July 1, 2022.

140 5. That all costs to the Unemployment Compensation Fund (the Fund) resulting from the
141 provisions of this act for overpayments of benefits under Chapter 6 (§ 60.2-600 et seq.) of Title
142 60.2 of the Code of Virginia shall be reimbursed to the Fund from the general fund in the general
143 appropriation act. For an overpayment waived pursuant to this act, no employer shall be
144 responsible for (i) reimbursing benefits or (ii) benefits charges, except as provided in § 60.2-528.1
145 of the Code of Virginia.

146 6. That the provisions of this act shall expire on July 1, 2022.