

LD6246805

HOUSE BILL NO. 1765

House Amendments in [] — January 25, 1995

A BILL to amend and reenact §§ 60.2-229, 60.2-301, 60.2-531, 60.2-535, 60.2-619, 60.2-620 and 60.2-622 of the Code of Virginia, relating to the Unemployment Compensation Act; miscellaneous provisions.

Patrons—Nixon, Bloxom, Callahan, Hargrove, Katzen, Nelms, Parrish and Tata

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-229, 60.2-301, 60.2-531, 60.2-535, 60.2-619, 60.2-620 and 60.2-622 of the Code of Virginia are amended and reenacted as follows:

§ 60.2-229. Wages.

A. "Wages" means all remuneration ~~payable~~ *paid, or which should have been paid*, for personal services, including commissions, bonuses, tips, back pay, dismissal pay, severance pay and any other payments made by an employer to an employee during his employment and thereafter and the cash value of all remuneration payable in any medium other than cash. Notwithstanding the other provisions of this subsection, wages paid in back pay awards shall be allocated to, and reported as being paid during, the calendar quarter or quarters in which such back pay would have been earned. Severance pay paid at the time of, or subsequent to, separation from employment shall be allocated to the last day of work unless otherwise allocated by the employer. If otherwise allocated, severance pay shall be allocated at a rate not less than the average weekly wage of such employee during the last calendar quarter, and reported as such. Severance pay shall be deducted from any benefits payable after the Commission's receipt of notification of severance pay by the employer pursuant to § 60.2-603. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Commission.

B. The term "wages" shall not include:

1. Subsequent to December 31, 1990, for purposes of taxes only, that part of the remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, that is greater than \$8,000 and is payable during any calendar year to an individual by any employer with respect to employment in this Commonwealth or any other state. If an employer, hereinafter referred to as "successor employer," during any calendar year acquires substantially all of the property used in a trade or business of another employer, hereinafter referred to as a "predecessor," or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, with respect to employment equal to \$8,000 is payable by the successor to such individual during such calendar year, any remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, with respect to employment payable, or considered under this subdivision as payable, to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as payable by such successor employer;

2. The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provisions for (i) his employees generally, (ii) for his employees generally and their dependents, (iii) for a class or classes of his employees, or (iv) for a class or classes of his employees and their dependents, on account of:

a. Retirement;

b. Sickness or accident disability payments which are received under a workers' compensation law;

c. Medical or hospitalization expenses in connection with sickness or accident disability;

d. Death; or

e. Unemployment benefits under any private plan financed in whole or in part by an employer;

3. The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employer under § 3101 of the Federal Internal Revenue Code;

4. Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with the sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

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60 5. Remuneration paid in any medium other than cash to an employee for service not in the course of
61 the employer's trade or business; or

62 6. Any payment, other than vacation or sick pay, made to an employee after the month in which he
63 attains the age of sixty-five, if he did not work for the employer in the period for which such payment
64 is made.

65 § 60.2-301. Clearing account; payment to credit of federal Unemployment Trust Fund.

66 All taxes and other moneys required by this title to be paid to the Unemployment Compensation
67 Fund and collected by the Commission, and any interest or earnings upon any moneys or property
68 belonging to the fund shall, ~~immediately~~ *promptly* upon collection, be paid into the state treasury and
69 credited to the clearing account. Any interest collected on taxes shall be paid into the Special
70 Unemployment Compensation Administration Fund continued by § 60.2-314. Refunds, except for interest
71 collected payable pursuant to § 60.2-524, may be paid from the clearing account. After clearance thereof,
72 all other moneys in the clearing account, including undeliverable payments, shall immediately be paid
73 over to the Secretary of the Treasury of the United States, to the credit of the Unemployment Trust
74 Fund established by the Social Security Act, to be held for the Commonwealth upon the terms and
75 conditions provided in the Social Security Act.

76 § 60.2-531. Experience rating tax; table.

77 Subject to the provisions of § 60.2-533, the experience rating tax rate for each employer for the
78 calendar year 1982 and subsequent years shall be the percent in the column corresponding to the
79 employer's benefit ratio, except that if the employer's benefit ratio exceeds 6.2 percent, the column under
80 6.2 percent shall be the appropriate column, and in the line corresponding to the fund balance factor for
81 the year pursuant to § 60.2-533.

82									
83									
84	BENEFIT	.00	.10	.20	.30	.40	.50	.60	.70
85	RATIOS IN								
86	PERCENTUM								
87									
88	FUND	TAX	TAX	TAX	TAX	TAX	TAX	TAX	TAX
89	BALANCE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE
90	FACTOR	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
91	IN %								
92									
93	120	0.00	0.08	0.15	0.23	0.30	0.33	0.45	0.53
94			0.07		0.22		0.37		0.52
95	115	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56
96	110	0.00	0.09	0.17	0.26	0.34	0.43	0.51	0.60
97			0.08		0.25		0.42		[0.57
98									0.59]
99	105	0.00	0.09	0.18	0.27	0.36	0.45	0.54	0.63
100	100	0.00	0.10	0.20	0.30	0.40	0.50	0.60	0.70
101	95	0.10	0.10	0.21	0.31	0.42	0.52	0.63	0.73
102	90	0.10	0.11	0.22	0.33	0.44	0.55	0.66	0.77
103	85	0.10	0.11	0.23	0.34	0.46	0.57	0.69	0.80
104	80	0.10	0.12	0.24	0.36	0.48	0.60	0.72	0.84
105	75	0.10	0.12	0.25	0.37	0.50	0.62	0.75	0.87
106	70	0.10	0.13	0.26	0.39	0.52	0.65	0.78	0.91
107	65	0.10	0.13	0.27	0.40	0.54	0.67	0.81	0.94
108	60	0.10	0.14	0.28	0.42	0.56	0.70	0.84	0.98
109	55	0.10	0.14	0.29	0.43	0.58	0.72	0.87	1.01
110	50	0.10	0.15	0.30	0.45	0.60	0.75	0.90	1.05
111									
112									
113	BENEFIT	.80	.90	1.00	1.10	1.20	1.30	1.40	1.50
114	RATIOS IN								
115	PERCENTUM								
116									
117	FUND	TAX	TAX	TAX	TAX	TAX	TAX	TAX	TAX

118	BALANCE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE
119	FACTOR	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
120	IN %								
121									
122	120	0.60	0.68	0.75	0.83	0.90	0.98	1.05	1.13
123			0.67		0.82		0.97		1.12
124	115	0.64	0.72	0.80	0.98	0.96	1.04	1.12	1.20
125					0.88				
126	110	0.68	0.77	0.85	0.94	1.02	1.11	1.19	1.28
127			0.76		0.93		1.10		1.27
128	105	0.72	0.81	0.90	0.99	1.08	1.17	1.26	1.35
129	100	0.80	0.90	1.00	1.10	1.20	1.30	1.40	1.50
130	95	0.84	0.94	1.05	1.15	1.26	1.36	1.47	1.57
131	90	0.88	0.99	1.10	1.21	1.32	1.43	1.54	1.65
132	85	0.92	1.03	1.15	1.26	1.38	1.49	1.61	1.72
133	80	0.96	1.08	1.20	1.32	1.44	1.56	1.68	1.80
134	75	1.00	1.12	1.25	1.37	1.50	1.62	1.75	1.87
135	70	1.04	1.17	1.30	1.43	1.56	1.69	1.82	1.95
136	65	1.08	1.21	1.35	1.48	1.62	1.75	1.89	2.02
137	60	1.12	1.26	1.40	1.54	1.68	1.82	1.96	2.10
138	55	1.16	1.30	1.45	1.59	1.74	1.88	2.03	2.17
139	50	1.20	1.35	1.50	1.65	1.80	1.95	2.10	2.25
140									
141									
142	BENEFIT	1.60	1.70	1.80	1.90	2.00	2.10	2.20	2.30
143	RATIOS IN								
144	PERCENTUM								
145									
146	FUND	TAX	TAX	TAX	TAX	TAX	TAX	TAX	TAX
147	BALANCE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE
148	FACTOR	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
149	IN %								
150									
151	120	1.20	1.28	1.35	1.43	1.50	1.58	1.65	1.72
152			1.27		1.42		1.57		
153	115	1.28	1.36	1.44	1.52	1.60	1.68	1.76	1.84
154	110	1.36	1.44	1.53	1.62	1.70	1.79	1.87	1.95
155					1.61		1.78		
156	105	1.44	1.53	1.62	1.71	1.80	1.89	1.93	2.07
157								1.98	
158	100	1.60	1.70	1.80	1.90	2.00	2.10	2.20	2.30
159	95	1.68	1.78	1.89	1.99	2.10	2.20	2.31	2.41
160	90	1.76	1.87	1.98	2.09	2.20	2.31	2.42	2.53
161	85	1.84	1.95	2.07	2.18	2.30	2.41	2.53	2.64
162	80	1.92	2.04	2.16	2.28	2.40	2.52	2.64	2.76
163	75	2.00	2.12	2.25	2.37	2.50	2.62	2.75	2.87
164	70	2.08	2.21	2.34	2.47	2.60	2.73	2.86	2.99
165	65	2.16	2.29	2.43	2.56	2.70	2.83	2.97	3.10
166	60	2.24	2.38	2.52	2.66	2.80	2.94	3.08	3.22
167	55	2.32	2.46	2.61	2.75	2.90	3.04	3.19	3.33
168	50	2.40	2.55	2.70	2.85	3.00	3.15	3.30	3.45
169									
170									
171	BENEFIT	2.40	2.50	2.60	2.70	2.80	2.90	3.00	3.10
172	RATIOS IN								
173	PERCENTUM								

231	FUND	TAX	TAX	TAX	TAX	TAX	TAX	TAX	TAX
232	BALANCE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE
233	FACTOR	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
234	IN %								
235									
236	120	3.00	3.07	3.15	3.23	3.30	3.38	3.45	3.53
237					3.22		3.37		3.52
238	115	3.20	3.28	3.36	3.44	3.52	3.60	3.63	3.76
239								3.68	
240	110	3.40	3.48	3.57	3.66	3.74	3.82	3.91	4.00
241					3.65				3.99
242	105	3.60	3.69	3.78	3.87	3.96	4.05	4.14	4.23
243	100	4.00	4.10	4.20	4.30	4.40	4.50	4.60	4.70
244	95	4.20	4.30	4.41	4.51	4.62	4.72	4.83	4.93
245	90	4.40	4.51	4.62	4.73	4.84	4.95	5.06	5.17
246	85	4.60	4.71	4.83	4.94	5.06	5.17	5.29	5.40
247	80	4.80	4.92	5.04	5.16	5.28	5.40	5.52	5.64
248	75	5.00	5.12	5.25	5.37	5.50	5.62	5.75	5.87
249	70	5.20	5.33	5.46	5.59	5.72	5.85	5.98	6.11
250	65	5.40	5.53	5.67	5.80	5.94	6.07	6.20	6.20
251	60	5.60	5.74	5.88	6.02	6.16	6.20	6.20	6.20
252	55	5.80	5.94	6.09	6.20	6.20	6.20	6.20	6.20
253	50	6.00	6.15	6.20	6.20	6.20	6.20	6.20	6.20
254									
255									
256	BENEFIT	4.80	4.90	5.00	5.10	5.20	5.30	5.40	5.50
257	RATIOS IN								
258	PERCENTUM								
259									
260	FUND	TAX	TAX	TAX	TAX	TAX	TAX	TAX	TAX
261	BALANCE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE
262	FACTOR	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
263	IN %								
264									
265	120	3.60	[3.68	3.75	3.82	3.90	3.98	4.05	4.13
266			3.67]				3.97		4.12
267	115	3.84	3.92	4.00	4.08	4.16	4.24	4.32	4.40
268	110	4.08	4.17	4.25	4.34	4.42	4.51	4.59	4.68
269			4.16		4.33		4.50		4.67
270	105	4.32	4.41	4.50	4.59	4.68	4.77	4.86	4.95
271	100	4.80	4.90	5.00	5.10	5.20	5.30	5.40	5.50
272	95	5.04	5.14	5.25	5.35	5.46	5.56	5.67	5.77
273	90	5.28	5.39	5.50	5.61	5.72	5.83	5.94	6.05
274	85	5.52	5.63	5.75	5.86	5.98	6.09	6.20	6.20
275	80	5.76	5.88	6.00	6.12	6.20	6.20	6.20	6.20
276	75	6.00	6.12	6.20	6.20	6.20	6.20	6.20	6.20
277	70	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
278	65	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
279	60	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
280	55	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
281	50	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
282									
283									
284	BENEFIT	5.60	5.70	5.80	5.90	6.00	6.10	6.20	
285	RATIOS IN								
286	PERCENTUM								

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287								
288	FUND	TAX	TAX	TAX	TAX	TAX	TAX	TAX
289	BALANCE	RATE	RATE	RATE	RATE	RATE	RATE	RATE
290	FACTOR	IN %	IN %	IN %	IN %	IN %	IN %	IN %
291	IN %							
292								
293	120	4.20	4.28	4.35	4.43	4.50	4.58	5.40
294			4.27		4.42		4.57	
295	115	4.48	4.56	4.64	4.72	4.80	4.88	5.40
296	110	4.76	4.85	4.93	5.02	5.10	5.19	5.40
297			4.84		5.01		5.18	
298	105	5.04	5.13	5.22	5.31	5.40	5.49	5.58
299	100	5.60	5.70	5.80	5.90	6.00	6.10	6.20
300	95	5.88	5.98	6.09	6.19	6.20	6.20	6.20
301	90	6.16	6.20	6.20	6.20	6.20	6.20	6.20
302	85	6.20	6.20	6.20	6.20	6.20	6.20	6.20
303	80	6.20	6.20	6.20	6.20	6.20	6.20	6.20
304	75	6.20	6.20	6.20	6.20	6.20	6.20	6.20
305	70	6.20	6.20	6.20	6.20	6.20	6.20	6.20
306	65	6.20	6.20	6.20	6.20	6.20	6.20	6.20
307	60	6.20	6.20	6.20	6.20	6.20	6.20	6.20
308	55	6.20	6.20	6.20	6.20	6.20	6.20	6.20
309	50	6.20	6.20	6.20	6.20	6.20	6.20	6.20

310

311 § 60.2-535. Employing unit acquiring business, etc., of another employing unit.

312 Whenever any employing unit in any manner succeeds to or acquires the organization, trade, separate

313 establishment or business, or substantially all the assets thereof, of another which at the time of such

314 acquisition was an employer subject to this title, the succeeding or acquiring unit shall be assigned the

315 experience record of the predecessor. Such record shall be deemed the experience record of the

316 successor solely for rate computation purposes as of July 1 of the year in which the acquisition

317 occurred. Such successor, unless already an employer subject to this title, shall, during the remainder of

318 the current calendar year, be subject to the rate of taxation of the predecessor. If such successor is at the

319 time of the acquisition an employer subject to this title, such successor's rate of tax to which it is then

320 subject shall remain the same until the next determination of rates under this chapter for all employers.

321 When a successor acquires an employing unit by partial acquisition, the ~~succeeding~~ predecessor

322 employer shall provide within thirty days of notification by the Commission, information relating to the

323 division of taxable payroll for partial acquisitions. Such information shall be provided on a form

324 supplied by the Commission.

325 § 60.2-619. Determinations and decisions by deputy; appeals therefrom.

326 A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim.

327 On the basis of the facts found by him, the deputy shall either:

328 a. Determine whether or not such claim is valid, and if valid, the week with respect to which

329 benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

330 b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission,

331 which tribunal or Commission shall make its determination in accordance with the procedure described

332 in § 60.2-620.

333 2. When the payment or denial of benefits will be determined by the provision of subdivision 2 of

334 § 60.2-612 the deputy shall promptly transmit his full finding of fact with respect to that subsection to

335 any appeal tribunal, which shall make its determination in accordance with the procedure described in

336 § 60.2-620.

337 B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice

338 of such filing to be mailed to the most recent thirty-day employing unit of the claimant and all

339 subsequent employing units, and any reimbursable employing units which may be liable for

340 reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice

341 shall not have any effect upon the claim for benefits.

342 C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by

343 mailing such notice to the claimant's last known address. In addition, notice of any determination which

344 involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be

345 promptly given in the same manner to the most recent thirty-day employing unit by whom the claimant

346 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 indicate prior to the determination, as required by regulation promulgated by the Commission, 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 twenty-one calendar days after the delivery of such notification, (ii) within twenty-one calendar days after such notification was mailed to his last known address, or (iii) within twenty-one days after such notification was mailed to the last known address of an interstate claimant. For good cause shown the twenty-one-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 the Commission's decision is finally modified or reversed to deny benefits, the modification or reversal shall apply to any weeks of unemployment that begin after the final decision.~~ 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.

§ 60.2-620. Hearing and decision on appeal.

A. Appeals filed under § 60.2-619 shall be heard by an appeal tribunal appointed pursuant to § 60.2-621. Such appeal tribunal, after affording the claimant and any other parties reasonable opportunity for a fair hearing, shall have jurisdiction to consider all issues with respect to the claim since the initial filing thereof. Such tribunal shall affirm, set aside, reverse, modify, or alter the findings of fact and decision of the deputy, and may enter such order or decision with respect to the claim as such appeal tribunal ~~findings~~ *finds* should have been entered. However, no such order or decision shall affect benefits already paid except in accordance with the provisions of § 60.2-633.

B. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within twenty-one days after the date of notification or mailing of such decision, further appeal is initiated pursuant to § 60.2-622. However, for good cause shown the twenty-one-day period may be extended.

§ 60.2-622. Commission review.

A. The Commission (i) may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or (ii) shall permit any of the parties to such decision to initiate further appeals before it. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard in accordance with the requirements of § 60.2-620. The Commission shall promptly notify the interested parties of its findings and decision.

B. 1. Any decision of the Commission, upon a hearing on appeal, shall become final ten days after the date of notification or mailing, and judicial review shall be permitted the claimant or any interested party claiming to be aggrieved. The Commission shall be deemed to be a party to any judicial action involving any such decision, and shall be represented in any such judicial action by the Office of the Attorney General.

2. Any such decision by the Commission involving (i) whether an employing unit constitutes an employer or (ii) whether services performed for or in connection with business of an employing unit constitute employment for such employing unit, from which no judicial review is had pursuant to ~~§ 60.2-625 subsection B of § 60.2-500~~, shall be conclusive in any subsequent judicial proceedings involving liability for taxes by the Commission against any employing unit which was a party to the proceedings held before the Commission.

C. The Commissioner shall have the power to designate a special examiner to hear appeals to the Commission under this section. The Commissioner may authorize and empower such special examiner to decide any appeal so heard, in which event the decision of the special examiner shall be the final decision of the Commission under this section, subject to judicial review under § 60.2-625.