

LD7629724

## SENATE BILL NO. 899

Offered January 23, 1995

*A BILL to amend and reenact §§ 60.2-213, 60.2-219, 60.2-226, and 60.2-612 of the Code of Virginia, relating to unemployment compensation; substitute teachers.*

Patron—Potts

Referred to the Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 60.2-213, 60.2-219, 60.2-226, and 60.2-612 of the Code of Virginia are amended and reenacted as follows:**

§ 60.2-213. Employment with hospital, higher education, state, subdivision, or certain religious or charitable organizations.

A. "Employment" includes:

1. Service performed by an individual (i) in the employ of this Commonwealth or any of its political subdivisions or instrumentalities or (ii) in the employ of this Commonwealth and one or more other states or their political subdivisions or instrumentalities, for a hospital or institution of higher education located in this Commonwealth provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of § 3306 (c) (7) of that act and is not excluded from "employment" under subsection B of this section;

2. Service performed by an individual (i) in the employ of this Commonwealth or any of its wholly owned instrumentalities or (ii) in the employ of this Commonwealth and one or more other states or their instrumentalities, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C.) by § 3306 (c) (7) of that act and is not excluded from "employment" under subsection B of this section;

3. Service performed by an individual (i) in the employ of any political subdivision of this Commonwealth or any of its wholly owned instrumentalities or (ii) in the employ of any instrumentality wholly owned by this Commonwealth, any of its political subdivisions or instrumentalities, or any instrumentality wholly owned by any of the foregoing and one or more other states or their political subdivisions, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by § 3306 (c) (7) of that act and is not excluded from "employment" under subsection B of this section;

4. Service performed by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

a. Their service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C.) solely by reason of § 3306 (c) (8) of that act; and

b. The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

B. For the purposes of subdivisions 3 and 4 of subsection A of this section, the term "employment" does not apply to service performed:

1. In the employ of (i) a church or convention or association of churches, or (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

2. By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

3. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

4. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

5. By an inmate of a custodial or penal institution; or

6. In the employ of this Commonwealth, or any political subdivision thereof or any instrumentality of any one or more of the foregoing as set forth in subdivisions 1 through 3 of subsection A of this section, if such service is performed by an individual in the exercise of duties:

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SB899

- 60 a. As an elected official;  
61 b. As a member of a legislative body, or a member of the judiciary;  
62 c. As a member of the state National Guard or Air National Guard;  
63 d. As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or  
64 similar emergency; or  
65 e. In a position which, under or pursuant to the laws of this Commonwealth, is designated as (i) a  
66 major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the  
67 performance of the duties of which ordinarily does not require more than eight hours per week.; or  
68 f. *As an employee serving on a temporary, as needed basis as a substitute teacher in a public*  
69 *elementary or secondary school in case of death, illness or similar emergency resulting in a temporary*  
70 *absence of regular instructional staff.*  
71 § 60.2-219. Services not included in term "employment."  
72 The term "employment" shall not include:  
73 1. Service performed in the employ of the United States government or of any instrumentality of the  
74 United States which is wholly or partially owned by the United States or which is exempt from the tax  
75 imposed by § 3301 of the Federal Internal Revenue Code by virtue of any provision of law which  
76 specifically refers to such section (or the corresponding section of prior law) in granting such exemption;  
77 2. Service with respect to which unemployment compensation is payable under an unemployment  
78 compensation system established by an act of Congress, including service performed after June 30,  
79 1939, for an employer determined to be subject to the Railroad Unemployment Insurance Act (45 U.S.C.  
80 § 351 et seq.) by the agency or agencies empowered to make such determination by an act of Congress,  
81 and service as an employer representative determined to be subject to such act by such agency or  
82 agencies. The Commission is hereby authorized and directed to enter into agreements with the proper  
83 agencies under such act of Congress, which agreements shall become effective ten days after publication  
84 thereof, in the manner provided in § 60.2-111 for general rules, to provide reciprocal treatment to  
85 individuals who have, after acquiring potential rights to benefits under this title, acquired rights to  
86 unemployment compensation under such act of Congress, or who have, after acquiring potential rights to  
87 unemployment compensation under such act of Congress, acquired rights to benefits under this title;  
88 3. Agricultural labor as defined in § 60.2-201 except as provided for in § 60.2-214;  
89 4. Domestic service in a private home, local college club or local chapter of a college fraternity or  
90 sorority except as provided for in § 60.2-215;  
91 5. Service performed on or in connection with a vessel or aircraft not an American vessel or  
92 American aircraft by an employee, if the employee is employed on and in connection with such vessel  
93 or aircraft when outside the United States;  
94 6. Service performed by an individual in, or as an officer or member of the crew of a vessel while it  
95 is engaged in the catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish,  
96 crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including service  
97 performed by any such individual as an ordinary incident to any such activity, except (i) service  
98 performed in connection with the catching or taking of salmon or halibut, for commercial purposes and  
99 (ii) service performed on or in connection with a vessel of more than ten net tons, determined in the  
100 manner provided for determining the register tonnage of merchant vessels under the laws of the United  
101 States;  
102 6a. Service performed by an individual on a boat engaged in catching fish or other forms of aquatic  
103 life under an arrangement with the owner or operator of such boat pursuant to which:  
104 a. Such individual does not receive any cash remuneration, other than as provided in subdivision b of  
105 subdivision 6a;  
106 b. Such individual receives a share of the boat's, or the boats' in the case of a fishing operation  
107 involving more than one boat, catch of fish or other forms of aquatic animal life, or a share of the  
108 proceeds from the sale of such catch; and  
109 c. The amount of such individual's share depends on the amount of the boat's, or the boats' in the  
110 case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal  
111 life, but only if the operating crew of such boat, or each boat from which the individual receives a share  
112 in the case of a fishing operation involving more than one boat is normally made up of fewer than ten  
113 individuals;  
114 7. Service performed by an individual in the employ of his son, daughter, or spouse and service  
115 performed by a child under the age of twenty-one in the employ of his father or mother;  
116 8. Service performed in any calendar quarter in the employ of any organization exempt from income  
117 tax (i) under § 501 (a) of the Federal Internal Revenue Code (26 U.S.C.), other than an organization  
118 described in § 401 (a) of such Code, or (ii) under § 521 of the Federal Internal Revenue Code, if the  
119 remuneration for such service is less than fifty dollars;  
120 9. Service performed in the employ of a school, college or university, if such service is performed by  
121 a student who is enrolled and is regularly attending classes at such school, college or university;

10. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law;

11. Service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

12. Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

13. Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

14. Service performed by an individual for an employing unit as a real estate salesman, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

15. Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

16. Service performed by an individual for an employing unit as an agent in the wholesale distribution and sale of gasoline and other petroleum products, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

17. Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter;

18. a. Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on. In order for such services to be excluded from "employment":

(1) The individual shall be enrolled as a student in a full-time program,

(2) The program shall be taken for credit at such institution,

(3) The program combines academic instruction with work experience, and

(4) Such service shall be an integral part of such program.

b. Such institution shall certify to the employer that subdivisions 18 a (1) through 18 a (4) of this section have been met.

c. This subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

19. Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in § 60.2-221;

20. Services provided by an individual pursuant to an agreement among the service recipient, a public human services agency as defined in § 63.1-291, and such individual to an eligible service recipient in his own home or the home of the service provider;

21. Services performed by an individual as a "direct seller" provided that:

a. Such person:

(1) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary of the Treasury prescribes by regulations for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment; or

(2) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to a consumer in the home or otherwise than in a permanent retail establishment;

b. Substantially all of the remuneration for the services performed as a direct seller, whether or not paid in cash, is directly related to sales or output, including the performances of services, rather than to the number of hours worked;

c. The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person

183 will not be treated as an employee with respect to such services for federal tax purposes;

184 22. Service performed after July 1, 1984, by an individual as a taxicab driver, or as a driver of an  
185 executive sedan as defined in § 56-338.104, provided the Commission is furnished evidence that such  
186 individual is excluded from taxation by the Federal Unemployment Tax Act;

187 23. Services performed by an individual as a "contract carrier courier driver" provided the  
188 Commission is furnished evidence that such individual is excluded from taxation by the Federal  
189 Unemployment Tax Act;

190 24. Services performed by a full-time student in the employ of an organized camp if:

191 a. Such camp:

192 (1) Did not operate for more than seven months in the calendar year and did not operate for more  
193 than seven months in the preceding calendar year; or

194 (2) Had average gross receipts for any six months in the preceding calendar year which were not  
195 more than thirty-three and one-third percent of its average gross receipts for the other six months in the  
196 preceding calendar year; and

197 b. Such full-time student performed services in the employ of such camp for less than thirteen  
198 calendar weeks in such calendar year;

199 25. Services performed by an individual as a court reporter for an employing unit if all such service  
200 performed by the individual for the employing unit is performed for remuneration solely by way of  
201 commission; and

202 26. Services performed by an individual as a cosmetologist or as a barber provided the Commission  
203 is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax  
204 Act.; and

205 *27. The inclusion of an individual's name on a list of persons qualified and willing to be called*  
206 *purely on an as needed, per diem basis to perform service as a substitute teacher. Services performed*  
207 *by an individual on an as needed, per diem basis as a substitute teacher shall be deemed "employment"*  
208 *only if such services are performed in excess of thirty days, whether or not such days were consecutive,*  
209 *during each school year.*

210 § 60.2-226. Unemployment.

211 A. An individual shall be deemed "unemployed" in any week during which he performs no services  
212 and with respect to which no wages are payable to him, or in any week of less than full-time work if  
213 the wages payable to him with respect to such week are less than his weekly benefit amount. Wages  
214 shall be deemed payable to an individual with respect to any week for which wages are due. An  
215 individual's week of unemployment shall be deemed to commence only after his registration at an  
216 employment office, except as the Commission may by regulation otherwise prescribe.

217 B. Notwithstanding any other provisions of this title, no individual shall be deemed unemployed with  
218 respect to any week he earns less than his weekly benefit amount solely because he did not work on a  
219 legal holiday as defined in § 2.1-21.

220 C. *Notwithstanding any other provisions of this title, no individual shall be deemed unemployed with*  
221 *respect to any week during which he performs no services or in which he earns less than his weekly*  
222 *benefit amount simply because he was not called to perform temporary, substitute teaching service on*  
223 *an as needed basis during any period when his name was included on a list of those individuals*  
224 *qualified and willing to be called for such service.*

225 § 60.2-612. Benefit eligibility conditions.

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

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

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

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

242 (2) He does not belong to a grade or class of workers of which, immediately before the  
243 commencement of the labor dispute, there were members employed at the premises, including a vessel,  
244 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. *Every claimant who is partially unemployed by virtue of his earnings falling below his weekly benefit amount while he is ready and willing to perform temporary or substitute services purely on an as needed, on-call basis, shall report to the Commission the names of the employers contacted each week in his efforts to obtain full-time 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 makes contacts with multiple employers on behalf of the claimant, meets the requirement that he be actively seeking and unable to obtain suitable work by contacting that hiring hall alone. In areas of high unemployment, as determined by the Commission, the Commission has the authority to adjust the requirement that he be actively seeking and unable to obtain suitable work.

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

8. He has given notice of resignation to his employer and the employer subsequently made the termination of employment effective immediately, but in no case to exceed two weeks for which he would have worked had the employee separated from employment on the date of termination as given in the notice; provided, that the claimant could not establish good cause for leaving work pursuant to § 60.2-618 and was not discharged for misconduct as provided in § 60.2-618.

9. Beginning January 6, 1991, he has served a waiting period of one week during which he was eligible for benefits under this section in all other respects and has not received benefits, except that only one waiting week shall be required of such individual within any benefit year.

10. He is not imprisoned or confined in jail.