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## HOUSE BILL NO. 2211

Offered January 16, 1997

*A BILL to amend and reenact §§ 60.2-114, 60.2-219, 60.2-600 and 60.2-623 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 60.2-608.2, relating to unemployment compensation; welfare reform.*

Patrons—Nixon; Senators: Reasor and Stosch

Referred to Committee on Labor and Commerce

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

**1. That §§ 60.2-114, 60.2-219, 60.2-600, and 60.2-623 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 60.2-608.2 as follows:**

§ 60.2-114. Records and reports.

A. Each employing unit shall keep true and accurate work records, containing such information as the Commission may prescribe. Such records shall be open to inspection and be subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this title. Information thus obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, except as the Commissioner or his delegates deem appropriate, nor shall such information be used in any judicial or administrative proceeding other than one arising out of the provisions of this title; however, the Commission shall make its records about a claimant available to the Workers' Compensation Commission if it requests such records. However, any claimant at a hearing before an appeal tribunal or the Commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Notwithstanding other provisions of this section, the Commissioner, or his delegate, may, in his discretion, reveal information when such communication is not inconsistent with the proper administration of this title.

B. Notwithstanding the provisions of subsection A, the Commission shall, on a reimbursable basis, furnish wage and unemployment compensation information contained in its records to the Secretary of Health and Human Services and the Division of Child Support Enforcement of the Department of Social Services for their use as necessary for the purposes of the National Directory of New Hires established under § 453 (i) of the Social Security Act.

BC. Each employing unit shall report to the Commission the initial employment of any person, as defined in § 60.2-212, within thirty-five days of such employment. Information to be provided shall include (i) the employee's name, address and social security number and (ii) the employer's name, address, and federal or Virginia Employment Commission identification number. This information may be provided by mailing a copy of the employee's W-4 forms, transmitting magnetic tape in a format prescribed by the Commission, or by any other means determined by the Commission to result in timely reporting. Notwithstanding any other provisions of law, the Commission shall transmit this information to the Department of Social Services pursuant to Title 63.1 within twenty-one days of its receipt by the Commission. The Commission shall have the authority to promulgate regulations to administer this provision, including any exemptions which are needed to reduce unnecessary or burdensome reporting. The Department of Social Services shall reimburse the Commission for administrative costs incurred pursuant to this section.

CD. Any member or employee of the Commission who violates any provision of this section shall be fined not less than \$20 nor more than \$200, or confined in jail for not longer than ninety days, or both.

§ 60.2-219. Services not included in term "employment."

The term "employment" shall not include:

1. Service performed in the employ of the United States government or of any instrumentality of the United States which is wholly or partially owned by the United States or which is exempt from the tax imposed by § 3301 of the Federal Internal Revenue Code by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

2. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress, including service performed after June 30, 1939, for an employer determined to be subject to the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) by the agency or agencies empowered to make such determination by an act of Congress,

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60 and service as an employer representative determined to be subject to such act by such agency or  
61 agencies. The Commission is hereby authorized and directed to enter into agreements with the proper  
62 agencies under such act of Congress, which agreements shall become effective ten days after publication  
63 thereof, in the manner provided in § 60.2-111 for general rules, to provide reciprocal treatment to  
64 individuals who have, after acquiring potential rights to benefits under this title, acquired rights to  
65 unemployment compensation under such act of Congress, or who have, after acquiring potential rights to  
66 unemployment compensation under such act of Congress, acquired rights to benefits under this title;

67 3. Agricultural labor as defined in § 60.2-201 except as provided for in § 60.2-214;

68 4. Domestic service in a private home, local college club or local chapter of a college fraternity or  
69 sorority except as provided for in § 60.2-215;

70 5. Service performed on or in connection with a vessel or aircraft not an American vessel or  
71 American aircraft by an employee, if the employee is employed on and in connection with such vessel  
72 or aircraft when outside the United States;

73 6. Service performed by an individual in, or as an officer or member of the crew of a vessel while it  
74 is engaged in the catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish,  
75 crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including service  
76 performed by any such individual as an ordinary incident to any such activity, except (i) service  
77 performed in connection with the catching or taking of salmon or halibut, for commercial purposes and  
78 (ii) service performed on or in connection with a vessel of more than ten net tons, determined in the  
79 manner provided for determining the register tonnage of merchant vessels under the laws of the United  
80 States;

81 6a. Service performed by an individual on a boat engaged in catching fish or other forms of aquatic  
82 life under an arrangement with the owner or operator of such boat pursuant to which:

83 a. Such individual does not receive any cash remuneration, other than as provided in subdivision b of  
84 subdivision 6a;

85 b. Such individual receives a share of the boat's, or the boats' in the case of a fishing operation  
86 involving more than one boat, catch of fish or other forms of aquatic animal life, or a share of the  
87 proceeds from the sale of such catch; and

88 c. The amount of such individual's share depends on the amount of the boat's, or the boats' in the  
89 case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal  
90 life, but only if the operating crew of such boat, or each boat from which the individual receives a share  
91 in the case of a fishing operation involving more than one boat is normally made up of fewer than ten  
92 individuals;

93 7. Service performed by an individual in the employ of his son, daughter, or spouse and service  
94 performed by a child under the age of twenty-one in the employ of his father or mother;

95 8. Service performed in any calendar quarter in the employ of any organization exempt from income  
96 tax (i) under § 501 (a) of the Federal Internal Revenue Code (26 U.S.C.), other than an organization  
97 described in § 401 (a) of such Code, or (ii) under § 521 of the Federal Internal Revenue Code, if the  
98 remuneration for such service is less than fifty dollars;

99 9. Service performed in the employ of a school, college or university, if such service is performed by  
100 a student who is enrolled and is regularly attending classes at such school, college or university;

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

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

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

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

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

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

120 16. Service performed by an individual for an employing unit as an agent in the wholesale  
121 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 will not be treated as an employee with respect to such services for federal tax purposes;

22. Service performed after July 1, 1984, by an individual as a taxicab driver, or as a driver of an executive sedan as defined in § 46.2-2500, provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act;

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

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

a. Such camp:

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

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

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

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

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

183 Act; and

184 27. *Services performed by an employee of a state or local agency performing intelligence or*  
185 *counterintelligence functions, if the head of such agency has determined that identifying an individual as*  
186 *an employee could endanger the safety of the employee or compromise an ongoing investigation or*  
187 *intelligence mission.*

188 § 60.2-600. No assignment of benefits; exemptions.

189 Any assignment, pledge or encumbrance of any right to benefits which are or may become due or  
190 payable under this title shall be void except as provided in this section and in §§ 60.2-608, 60.2-608.1,  
191 60.2-608.2, and 60.2-633. Such rights to benefits shall be exempt from levy, execution, attachment,  
192 garnishment or any other legal process provided for the collection of debt, even if the compensation is  
193 used for purchase of shares in a credit union, or deposited into an account with a financial institution or  
194 other organization accepting deposits and is thereby commingled with other funds, except debts incurred  
195 for necessities furnished to such individual, his spouse or dependents during the time when such  
196 individual was unemployed. Any waiver of any exemption provided for in this section shall be void.

197 Upon an order of garnishment, attachment or other levy addressed to a financial institution in which  
198 the principal defendant claims to have exempt funds hereunder, the principal defendant may file an  
199 answer asserting the exemption hereunder. From the time of service of such garnishment, attachment or  
200 levy, the financial institution, until further order of the court, shall hold the amount subject to such  
201 garnishment, attachment or levy, or such lesser amount or sum as it may have, which amount shall be  
202 set forth in its answer. It shall hold such amount free of any person drawing against such funds whether  
203 by check against such account or otherwise. The financial institution shall be subject to such further  
204 order or subpoena for discovery of its records, for which it shall be entitled an order or agreement for  
205 compensation for the expense of such service, and in a case deemed appropriate to the court by such an  
206 order directing deposit of funds or further security prior to such records being ordered produced.

207 § 60.2-608.2. *Withholding of benefits; food stamp overissuance.*

208 A. *Any individual filing a new claim for unemployment compensation shall, at the time of filing such*  
209 *claim, disclose whether or not the individual owes an uncollected overissuance of food stamp coupons,*  
210 *as such is defined in § 13(c)(1) of the Food Stamp Act of 1977, 7 U.S.C. § 2022(c)(1). If any such*  
211 *individual discloses that he or she owns food stamp obligations and is determined to be eligible for*  
212 *unemployment compensation, the Commission shall notify the state food stamp agency enforcing such*  
213 *obligation that the individual has been determined to be eligible for unemployment compensation.*

214 B. *The Commission shall deduct and withhold the following from any unemployment compensation*  
215 *payable to an individual who owes an uncollected overissuance:*

216 1. *The amount specified by the individual to the Commission to be deducted and withheld under this*  
217 *subsection, if neither the provisions of subdivision 2 nor the provisions of subdivision 3 of this*  
218 *subsection are applicable; or*

219 2. *The amount, if any, determined pursuant to an agreement submitted to the Commission by the*  
220 *state food stamp agency under § 13(c)(3)(A) of the Food Stamp Act of 1977, 7 U.S.C. § 2022 (c)(3)(A);*  
221 *or*

222 3. *Any amount otherwise required to be so deducted and withheld from such unemployment*  
223 *compensation pursuant to § 13(c)(3)(B) of the Food Stamp Act of 1977, 7 U.S.C. § 2022(c)(3)(B).*

224 C. *Any amount deducted and withheld under subsection B shall be paid by the Commission to the*  
225 *appropriate state food stamp agency.*

226 D. *Any amount deducted and withheld under subsection B shall for all purposes be treated as if it*  
227 *were paid to the individual as unemployment compensation and paid by such individual to the state food*  
228 *stamp agency as repayment of the individual's uncollected overissuance.*

229 E. *For purposes of subsections A through D of this section, the term "unemployment compensation"*  
230 *means any compensation payable under this title including amounts payable by the Commission*  
231 *pursuant to an agreement under any federal law providing for compensation, assistance, or allowances*  
232 *with respect to unemployment.*

233 F. *The provisions of this section shall be applicable only if appropriate arrangements have been*  
234 *made for reimbursement by the state food stamp agency for the administrative costs incurred by the*  
235 *Commission under this subsection which are attributable to the repayment of uncollected overissuances*  
236 *to the state food stamp agency.*

237 § 60.2-623. Procedure generally; confidentiality of information.

238 A. The manner in which disputed claims shall be presented, reports required from the claimant and  
239 from employers, the conduct of hearings and appeals before any deputy, appeal tribunal or the  
240 Commission, and transcripts prepared shall be in accordance with regulations prescribed by the  
241 Commission for determining the rights of the parties. Such regulations need not conform to common law  
242 or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be  
243 kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a  
244 disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further

245 appealed and a timely request for a hearing before the Commission has been made in accordance with  
246 regulations prescribed by the Commission.

247 B. Information furnished the Commission under the provisions of this chapter shall not be published  
248 or be open to public inspection, other than to public employees in the performance of their public  
249 duties. Neither such information, nor any determination or decision rendered under the provisions of  
250 §§ 60.2-619, 60.2-620 or § 60.2-622, shall be used in any judicial or administrative proceeding other  
251 than one arising out of the provisions of this title; however, the Commission shall make its records  
252 about a claimant available to the Workers' Compensation Commission if it requests such records. The  
253 Commission may also, in its discretion, furnish copies of the transcript of hearings to any party.

254 C. *Notwithstanding the provisions of subsection B, the Commission shall, on a reimbursable basis,*  
255 *furnish wage and unemployment compensation information contained in its records to the Secretary of*  
256 *Health and Human Services and Virginia's child support enforcement agency for their use as necessary*  
257 *for the purposes of the National Directory of New Hires established under § 453(i) of the Social*  
258 *Security Act.*

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