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## SENATE BILL NO. 1182

Offered January 20, 1997

*A BILL to amend and reenact §§ 60.2-528, 60.2-614, 60.2-618, and 60.2-619 of the Code of Virginia, relating to unemployment compensation; responsibility for benefit charges.*

Patrons—Edwards, Barry and Reasor

Referred to the Committee on Commerce and Labor

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

**1. That §§ 60.2-528, 60.2-614, 60.2-618 and 60.2-619 of the Code of Virginia are amended and reenacted as follows:**

§ 60.2-528. Individual benefit charges.

A. An individual's "benefit charges" shall be computed in the following manner:

1. For each week benefits are received, a claimant's "benefit charges" shall be equal to his benefits received for such week.

2. For each week extended benefits are received, pursuant to § 60.2-610 or § 60.2-611, a claimant's "benefit charges" shall be equal to one-half his benefits received for such week. However, a claimant's "benefit charges" for extended benefits attributable to service in the employ of a governmental entity referred to in subdivisions 1 through 3 of subsection A of § 60.2-213 shall be equal to the full amount of such extended benefit.

3. For each week partial benefits are received, the claimant's "benefit charges" shall be computed (i) in the case of regular benefits as in subdivision 1 of this subsection, or (ii) in the case of extended benefits as in subdivision 2 of this subsection.

B. 1. The employing unit from whom such individual was separated, resulting in the current period of unemployment, shall be the most recent employing unit for whom such individual has performed services for remuneration (i) during thirty days, whether or not such days are consecutive, or (ii) during 240 hours. If such individual's unemployment is caused by separation from an employer, such individual's "benefit charges" for such period of unemployment shall be deemed the responsibility of the last ~~thirty-day~~ employer for (i) thirty days or (ii) 240 hours prior to such period of unemployment.

2. Any employer charged with benefits paid shall be notified of the charges quarterly by the Commission. The amount specified shall be conclusive on the employer unless, not later than thirty days after the notice of benefit charges was mailed to its last known address or otherwise delivered to it, the employer files an appeal with the Commission, setting forth the grounds for such an appeal. Proceedings on appeal to the Commission regarding the amount of benefit charges under this subsection or a redetermination of such amount shall be in accordance with the provisions of § 60.2-500. The decision of the Commission shall be subject to the provisions of § 60.2-500. Any appeal perfected pursuant to the provisions of this section shall not address any issue involving the merits or conditions of a claimant's separation from employment.

C. No "benefit charges" shall be deemed the responsibility of an employer of:

1. An individual whose separation from the work of such employer arose as a result of a violation of the law by such individual, which violation led to confinement in any jail or prison;

2. An individual who voluntarily left employment in order to accept other employment, genuinely believing such employment to be permanent;

3. An individual with respect to any weeks in which benefits are claimed and received after such date as that individual refused to accept an offer of rehire by the employer because such individual was in training with approval of the Commission pursuant to § 60.2-613;

4. An individual who voluntarily left employment to enter training approved under § 236 of the Trade Act of 1974 (19 U.S.C. § 2296 et seq.);

5. An individual hired to replace a member of the Reserve of the United States Armed Forces or the National Guard called into active duty as a result of Operation Desert Shield or Operation Desert Storm and whose employment is terminated concurrent with and because of that member's return from active duty; or

6. An individual who left employment voluntarily with good cause due to a personal bona fide medical reason caused by a non-job-related injury or medical condition.

§ 60.2-614. Service required during immediately preceding benefit year in which individual received benefits.

No individual may receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which he received benefits, he performed service for an

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60 employer as defined in § 60.2-210 for remuneration (i) during thirty days, whether or not such days  
61 were consecutive, *or (ii) for 240 hours*, and subsequently became totally or partially separated from such  
62 employment.

63 § 60.2-618. Disqualification for benefits.

64 An individual shall be disqualified for benefits upon separation from the last employing unit for  
65 whom he has worked thirty days *or 240 hours* or from any subsequent employing unit:

66 1. For any week benefits are claimed until he has performed services for an employer (i) during  
67 thirty days, whether or not such days are consecutive, *or (ii) for 240 hours*, and subsequently becomes  
68 totally or partially separated from such employment, if the Commission finds such individual is  
69 unemployed because he left work voluntarily without good cause. As used in this chapter "good cause"  
70 shall not include (i) voluntarily leaving work with an employer to become self-employed, or (ii)  
71 voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality.  
72 An individual shall not be deemed to have voluntarily left work solely because the separation was in  
73 accordance with a seniority-based policy.

74 2. For any week benefits are claimed until he has performed services for an employer (i) during  
75 thirty days, whether or not such days are consecutive, *or (ii) for 240 hours*, and subsequently becomes  
76 totally or partially separated from such employment, if the Commission finds such individual is  
77 unemployed because he has been discharged for misconduct connected with his work.

78 3. a. If it is determined by the Commission that such individual has failed, without good cause, either  
79 to apply for available, suitable work when so directed by the employment office or the Commission or  
80 to accept suitable work when offered him. The disqualification shall commence with the week in which  
81 such failure occurred, and shall continue for the period of unemployment next ensuing until he has  
82 performed services for an employer (i) during thirty days, whether or not such days are consecutive, *or*  
83 *(ii) for 240 hours*, and subsequently becomes totally or partially separated from such employment.

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

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

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

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

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

95 d. No individual shall be qualified for benefits during any week that such individual, in connection  
96 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,  
97 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is (i) required as a  
98 condition of employment and (ii) performed, and a sample is collected, in accordance with scientifically  
99 recognized standards by a laboratory accredited by the National Institute of Drug Abuse. The  
100 disqualification shall commence with the week in which such a test was conducted, and shall continue  
101 for the period of unemployment next ensuing until he has performed services for an employer (i) during  
102 thirty days, whether or not such days are consecutive, *or (ii) for 240 hours*, and subsequently becomes  
103 totally or partially separated from such employment.

104 4. For fifty-two weeks, beginning with the date of the determination or decision, if the Commission  
105 finds that such individual, within thirty-six calendar months immediately preceding such determination  
106 or decision, has made a false statement or representation knowing it to be false, or has knowingly failed  
107 to disclose a material fact, to obtain or increase any benefit or payment under this title, the  
108 unemployment compensation of any other state, or any other program of the federal government which  
109 is administered in any way under this title, either for himself or any other person. Additionally, such  
110 individual shall be ineligible for benefits until he has repaid the Commission the sum which has been  
111 fraudulently obtained.

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

116 § 60.2-619. Determinations and decisions by deputy; appeals therefrom.

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

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

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

122 which tribunal or Commission shall make its determination in accordance with the procedure described  
123 in § 60.2-620.

124 2. When the payment or denial of benefits will be determined by the provision of subdivision 2 of  
125 § 60.2-612 the deputy shall promptly transmit his full finding of fact with respect to that subsection to  
126 any appeal tribunal, which shall make its determination in accordance with the procedure described in  
127 § 60.2-620.

128 B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice  
129 of such filing to be mailed to the most recent thirty-day *or 240-hour* employing unit of the claimant and  
130 all subsequent employing units, and any reimbursable employing units which may be liable for  
131 reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice  
132 shall not have any effect upon the claim for benefits.

133 C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by  
134 mailing such notice to the claimant's last known address. In addition, notice of any determination which  
135 involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be  
136 promptly given in the same manner to the most recent thirty-day *or 240-hour* employing unit by whom  
137 the claimant was last employed and any subsequent employing unit which is a party. The Commission  
138 may dispense with the giving of notice of any determination to any employing unit and such employing  
139 unit shall not be entitled to such notice if it has failed to indicate prior to the determination, as required  
140 by regulation promulgated by the Commission, that the claimant may be ineligible or disqualified under  
141 any provision of this title. The deputy shall promptly notify the claimant of any decision made by him  
142 at any time which in any manner denies benefits to the claimant for one or more weeks.

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

148 E. Benefits shall be paid promptly in accordance with a determination or redetermination under this  
149 chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court  
150 under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision,  
151 regardless of the pendency of the period to file an appeal or petition for judicial review that is provided  
152 in this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until  
153 such determination, redetermination or decision has been modified or reversed by a subsequent  
154 redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment  
155 thereafter in accordance with such modifying or reversing redetermination or decision. If a decision of  
156 an appeal tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall  
157 continue to be paid until such time as a court decision has become final so that no further appeal can be  
158 taken. If an appeal is taken from the Commission's decision, benefits paid shall result in a benefit charge  
159 to the account of the employer under § 60.2-530 only when, and as of the date on which, as the result  
160 of an appeal, the courts finally determine that the Commission should have awarded benefits to the  
161 claimant or claimants involved in such appeal.