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HOUSE BILL NO. 776

Offered January 26, 1998

A BILL to amend and reenact §§ 60.2-114, 60.2-116, 60.2-210, 60.2-218, 60.2-501, 60.2-502, 60.2-507, 60.2-509, 60.2-511, and 60.2-532 of the Code of Virginia, and to repeal §§ 60.2-212, 60.2-212.1, 60.2-213 through 60.2-217 and 60.2-219 of the Code of Virginia, relating to unemployment compensation; definition of employment.

Patron—Deeds

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-114, 60.2-116, 60.2-210, 60.2-218, 60.2-501, 60.2-502, 60.2-507, 60.2-509, 60.2-511, and 60.2-532 of the Code of Virginia are amended and reenacted 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 Information thus obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's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.

C. 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, as defined in § 60.2-218. 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.

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.

§ 60.2-116. Reciprocal agreements.

A. Subject to the approval of the Governor, the Commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in §§ 60.2-212 through 60.2-219, § 60.2-218 or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this Commonwealth or within one of such other states. Such arrangements may set forth terms whereby the potential right to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency of any state under

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60 terms which the Commission finds will be fair and reasonable as to all affected interests and will not  
61 result in any substantial loss to the fund.

62 B. Subject to the approval of the Governor, the Commission is also authorized to enter into  
63 arrangements with the appropriate agencies of other states or of the federal government:

64 1. a. Whereby wages or services, upon the basis of which an individual may become entitled to  
65 benefits under the unemployment compensation law of another state or of the federal government, shall  
66 be deemed to be wages for employment by employers for the purposes of §§ 60.2-218, 60.2-602,  
67 60.2-606, 60.2-607, 60.2-609, 60.2-610, and 60.2-611, ~~subdivision 1 of § 60.2-612 and §§ 60.2-614~~  
68 ~~through 60.2-617~~, provided such other state agency or agency of the federal government has agreed to  
69 reimburse the fund for such portion of benefits paid under this title upon the basis of such wages or  
70 services as the Commission finds will be fair and reasonable as to all affected interests; and

71 b. Whereby the Commission will reimburse other state or federal agencies charged with the  
72 administration of unemployment compensation laws with such reasonable portion of benefits, paid under  
73 the law of any such other states or of the federal government upon the basis of employment or wages  
74 for employment by employers, as the Commission finds will be fair and reasonable as to all affected  
75 interests.

76 2. Reimbursements so payable under subdivision 1 b of this subsection shall be deemed to be  
77 benefits for the purposes of §§ 60.2-300 through 60.2-304, but no reimbursement so payable shall be  
78 charged against any employer's account for the purposes of §§ 60.2-526 through 60.2-531. The  
79 Commission is hereby authorized to make to other state or federal agencies and receive from such other  
80 state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant  
81 to this section.

82 C. Subject to the approval of the Governor, the Commission is also authorized to enter into  
83 arrangements with the appropriate agencies of other states or of the federal government:

84 1. Whereby the Commission may deduct, in accordance with the provisions of § 60.2-633, from  
85 unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to  
86 such individual under an unemployment benefit program of the United States or of any other state, and  
87 not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program  
88 such overpayment was made and in accordance with the arrangement between the Commission and the  
89 jurisdiction.

90 2. Whereby the United States agrees to allow the Commission to recover from unemployment  
91 benefits otherwise payable to an individual under an unemployment benefit program of the United States  
92 any overpayments made by the Commission to such individual under this title and not previously  
93 recovered, in accordance with the same procedures that apply under subdivision 1 of this subsection.

94 The amendments made by this subsection shall apply to recoveries made on or after July 1, 1987,  
95 and shall apply with respect to overpayments made before, on, or after such date.

96 § 60.2-210. Employer.

97 A. The term "employer" means any employing unit which:

98 1. In any calendar quarter in either the current or preceding calendar year paid for some service in  
99 employment wages of \$1,500 or more or such other amount as provided by federal law pursuant to 26  
100 U.S.C. § 3306; or

101 2. For some portion of a day in each of twenty different weeks, whether or not such weeks were  
102 consecutive, in either the current or the preceding calendar year, has or had in its employment at least  
103 one individual, irrespective of whether the same individual was in employment in each such day.

104 B. The term "employer" shall also mean:

105 1. Any employing unit which acquired the organization, trade, separate establishment or business or  
106 substantially all the assets thereof, of another which at the time of such acquisition was an employer  
107 subject to this title;

108 2. Any employing unit which acquired the organization, trade or business or substantially all the  
109 assets thereof, of another employing unit and which, if treated as a single unit with such other  
110 employing unit, would be an employer under subsection A of this section;

111 3. Any employing unit which together with one or more other employing units, is owned or  
112 controlled, by legally enforceable means or otherwise, directly or indirectly by the same interests, or  
113 which owns or controls one or more other employing units, by legally enforceable means or otherwise,  
114 and which if treated as a single unit with such other employing unit, would be an employer under  
115 subsection A or B of this section;

116 4. Any employing unit which having become an employer under subsection A of this section or  
117 ~~subdivisions~~ *subdivision* 1, 2, 3, or 6, 7 or 8 of this subsection has not, under § 60.2-509, ceased to be  
118 an employer subject to this title;

119 5. For the effective period of its election pursuant to § 60.2-510, any other employing unit which has  
120 elected to become fully subject to this title;

121 6. Any employing unit not an employer by reason of any other subdivision of this section (i) for

122 which, within either the current or preceding calendar year, service is or was performed with respect to  
 123 which such employing unit is liable for any federal tax against which credit may be taken for taxes  
 124 required to be paid into a state unemployment fund; or (ii) which, as a condition for approval of this  
 125 title for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required,  
 126 pursuant to such act, to be an "employer" under this title; *or*

127 7. Any employing unit for which service in employment, as defined in subdivisions 1 through 3 of  
 128 subsection A of § 60.2-213, is performed;

129 8. Any employing unit, for which service in employment, as defined in subdivision 4 of subsection  
 130 A of § 60.2-213, is performed;

131 9. For the purposes of subdivision 2 of subsection A of this section and subdivisions 8 and 10 of  
 132 this subsection if any week includes both December 31 and January 1, the days of that week up to  
 133 January 1 shall be deemed one calendar week and the days beginning January 1 another such week;

134 10. Any employing unit for which agricultural labor in employment as defined in § 60.2-214 is  
 135 performed; *or*

136 11. Any employing unit for which domestic service in employment as defined in § 60.2-215 is  
 137 performed.

138 C. 1. In determining whether an employing unit for which service other than domestic service is also  
 139 performed is an employer under subsection A *or* subdivision 10 of subsection B of this section, the  
 140 wages earned or the employment of an employee performing domestic service shall not be taken into  
 141 account.

142 2. In determining whether an employing unit for which service other than agricultural labor is also  
 143 performed is an employer under subsection A *or* subdivision 11 of subsection B of this section, the  
 144 wages earned or the employment of an employee performing service in agricultural labor shall not be  
 145 taken into account. If an employing unit is determined an employer of agricultural labor, such  
 146 employing unit shall be determined an employer for the purpose of subsection A of this section.

147 § 60.2-218. Employment.

148 Notwithstanding any other provision of §§ 60.2-212 through 60.2-217 and § 60.2-219, the *The* term  
 149 "employment" shall mean service with respect to which a tax is required to be paid under any federal  
 150 law imposing a tax against which credit may be taken for taxes required to be paid into a state  
 151 unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal  
 152 Unemployment Tax Act is required to be covered under this title.

153 § 60.2-501. Financing of benefits to employees of nonprofit organizations.

154 A. Benefits paid to employees of nonprofit organizations shall be financed in accordance with the  
 155 provisions of this section. For the purpose of this section, a nonprofit organization is an organization, or  
 156 group of organizations, described in § 501 (c) (3) of the United States Internal Revenue Code which is  
 157 exempt from income tax under § 501 (a) of that Code.

158 B. Any nonprofit organization which, pursuant to subdivision 8 of subsection B of § 60.2-210  
 159 § 60.2-218, is or becomes subject to this title shall pay taxes under the provisions of § 60.2-511, unless  
 160 it elects, in accordance with this subsection, to pay to the Commission for the unemployment fund an  
 161 amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is  
 162 attributable to service in the employ of such nonprofit organization, and that is for weeks of  
 163 unemployment which begin during the effective period of such election.

164 1. Any nonprofit organization which is or becomes subject to this title may elect to become liable for  
 165 payments in lieu of taxes for a period of not less than one taxable year beginning with January 1 of  
 166 each year, provided it files with the Commission a written notice of its election within the thirty-day  
 167 period immediately following such date.

168 2. Any nonprofit organization which becomes subject to this title may elect to become liable for  
 169 payments in lieu of taxes for a period of not less than twelve months beginning with the date on which  
 170 such subjectivity begins by filing a written notice of its election with the Commission not later than  
 171 thirty days immediately following the date of the determination of such subjectivity.

172 3. Any nonprofit organization which makes an election in accordance with subdivision 1 or 2 of this  
 173 subsection shall continue to be liable for payments in lieu of taxes until it files with the Commission a  
 174 written notice terminating its election not later than thirty days prior to the beginning of the taxable year  
 175 for which such termination shall first be effective.

176 4. Any nonprofit organization which has been paying taxes under this title may change to a  
 177 reimbursable basis by filing with the Commission, not later than thirty days prior to the beginning of  
 178 any taxable year, a written notice of election to become liable for payments in lieu of taxes. Such  
 179 election shall not be terminable by the organization for that and the next year.

180 5. The Commission may for good cause extend the period within which a notice of election, or a  
 181 notice of termination, shall be filed and may permit an election to be retroactive but not any earlier than  
 182 January 1 of the current calendar year.

183 6. The Commission, in accordance with such regulations as it may prescribe, shall notify each  
184 nonprofit organization of any determination which it may make of its status as an employer and of the  
185 effective date of any election which it makes and of any termination of such election. Such  
186 determinations shall be subject to reconsideration, appeal and review in accordance with the provisions  
187 of § 60.2-500.

188 C. Payments in lieu of taxes shall be made in accordance with the provisions of this subsection,  
189 including either subdivision 1 or 2.

190 1. a. At the end of each calendar quarter, or at the end of any other period as determined by the  
191 Commission, the Commission shall bill each nonprofit organization, or group of such organizations,  
192 which has elected to make payments in lieu of taxes for an amount equal to the full amount of regular  
193 benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed  
194 period that is attributable to service in the employ of such organization.

195 b. If the final adjudication of a disputed claim finds the claimant totally or partially ineligible for  
196 benefits, the nonprofit organization shall be liable for any bill resulting from payments made to the  
197 claimant during or prior to the appeal process, whether made by erroneous statutory interpretation,  
198 administrative error, or incorrect wage reporting.

199 2. a. Each nonprofit organization that has elected payments in lieu of taxes may request permission  
200 to make such payments as provided in this paragraph. Such method of payment shall become effective  
201 upon approval by the Commission.

202 b. At the end of each calendar quarter, or at the end of such other period as determined by the  
203 Commission, the Commission shall bill each nonprofit organization for an amount representing one of  
204 the following:

205 (1) One-tenth of one percent of its total payroll for the preceding calendar year.

206 (2) Such percentage of its total payroll for the immediately preceding calendar year as the  
207 Commission shall determine. Such determination shall be based each year on the average benefit costs  
208 attributable to service in the employ of nonprofit organizations during the preceding calendar year.

209 (3) For any organization which did not pay wages throughout the four calendar quarters of the  
210 preceding calendar year, such percentage of its payroll during such year as the Commission shall  
211 determine.

212 c. At the end of each taxable year, the Commission may modify the quarterly percentage of payroll  
213 thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

214 d. At the end of each taxable year, the Commission shall determine whether the total of payments for  
215 such year made by a nonprofit organization is more or less than the total amount of regular benefits plus  
216 one-half of the amount of extended benefits paid to individuals during such taxable year based on wages  
217 attributable to service in the employ of such organization. Each nonprofit organization whose total  
218 payments for such year are less than the amount so determined shall be liable for payment of the unpaid  
219 balance to the fund in accordance with subdivision 3 of this subsection. If the total payments exceed the  
220 amount so determined for the taxable year, all or a part of the excess may, at the discretion of the  
221 Commission, be refunded from the fund or retained in the fund as part of the payments which may be  
222 required for the next taxable year.

223 3. Payment of any bill rendered under subdivision 1 or 2 of this subsection shall be made not later  
224 than thirty days after such bill was mailed to the last known address of the nonprofit organization or  
225 was otherwise delivered to it, unless there has been an application for review and redetermination in  
226 accordance with subdivision 5 of this subsection.

227 4. Payments made by any nonprofit organization under the provisions of this subsection shall not be  
228 deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the  
229 organization.

230 5. The amount due specified in any bill from the Commission shall be conclusive on the organization  
231 unless, not later than thirty days after the bill was mailed to its last known address or otherwise  
232 delivered to it, the organization files an appeal with the Commission, setting forth the grounds for such  
233 appeal. Proceedings on appeal to the Commission from the amount of a bill rendered under this  
234 subsection or a redetermination of such amount shall be in accordance with the provisions of § 60.2-500.  
235 The decision of the Commission shall be subject to the provisions of § 60.2-500.

236 6. Past-due payments of amounts in lieu of taxes shall be subject to the same interest and penalties  
237 that, pursuant to § 60.2-519, apply to past-due taxes.

238 § 60.2-502. Bonding of nonprofit organizations.

239 A. In the discretion of the Commission, any nonprofit organization that elects to become liable for  
240 payments in lieu of taxes shall be required within thirty days after the effective date of its election (i) to  
241 execute and file with the Commission a surety bond approved by the Commission or (ii) to deposit with  
242 the Commission money or securities. The amount of such bond or deposit shall be determined in  
243 accordance with the provisions of this section.

244 B. The amount of the bond or deposit required by this section shall be a percentage, determined by

245 the Commission, of the organization's taxable wages paid for employment as defined in ~~subdivision 4 of~~  
 246 ~~subsection A of § 60.2-213~~ § 60.2-218 for the four calendar quarters immediately preceding the effective  
 247 date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective  
 248 date of election in the case of a deposit of money or securities, whichever date is most recent and  
 249 applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the  
 250 amount of the bond or deposit shall be as determined by the Commission.

251 C. Any bond deposited under this section shall be in force for a period of not less than two taxable  
 252 years and shall be renewed with the approval of the Commission, at such time as the Commission may  
 253 prescribe, but not less frequently than at two-year intervals as long as the organization continues to be  
 254 liable for payments in lieu of taxes. The Commission shall require adjustments to be made in a  
 255 previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be  
 256 filed by the organization within thirty days of the date notice of the required adjustment was mailed or  
 257 otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of  
 258 payments in lieu of taxes when due, together with any applicable interest and penalties provided for in  
 259 subdivision 6 of subsection C of § 60.2-501, shall render the surety liable on such bond to the extent of  
 260 the bond, as though the surety was such organization.

261 D. Any deposit of money or securities made in accordance with this section shall be retained by the  
 262 Commission in an escrow account until liability under the election is terminated, at which time it shall  
 263 be returned to the organization, less any deductions as hereinafter provided. The Commission may  
 264 deduct from the money deposited under this section by a nonprofit organization or sell the securities it  
 265 has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of taxes and any  
 266 applicable interest and penalties provided for in subdivision 6 of subsection C of § 60.2-501. The  
 267 Commission shall require the organization within thirty days following any deduction from a money  
 268 deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient  
 269 additional money or securities to make whole the organization's deposit at the prior level. Any cash  
 270 remaining from the sale of such securities shall be a part of the organization's escrow account. The  
 271 Commission may review the adequacy of the deposit made by any organization. If, as a result of such  
 272 review, it determines that an adjustment is necessary, the organization shall be required to make  
 273 additional deposit within thirty days of written notice of the determination or the Commission shall  
 274 return to it such portion of the deposit as it no longer considers necessary, whichever action is  
 275 appropriate. Disposition of income from securities held in escrow shall be governed by the applicable  
 276 provisions of the state law.

277 E. If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an  
 278 increased amount or to increase or make whole the amount of a previously made deposit, as provided  
 279 under this subsection, the Commission may terminate such organization's election to make payments in  
 280 lieu of taxes and such termination shall continue for not less than the four consecutive calendar quarter  
 281 period beginning with the quarter in which such termination becomes effective; however, the  
 282 Commission may extend for good cause the applicable filing, deposit or adjustment period by not more  
 283 than thirty days.

284 § 60.2-507. Financing of benefits to employees of governmental entities.

285 A. Any governmental entity which is an employer by virtue of ~~subdivision 7 of subsection B of~~  
 286 ~~§ 60.2-210~~ § 60.2-218 shall be permitted to join with one or more other governmental entities to form a  
 287 joint account in accordance with regulations prescribed by the Commission.

288 B. Each governmental entity which is an employer by virtue of ~~subdivision 7 of subsection B of~~  
 289 ~~§ 60.2-210~~ § 60.2-218 and each joint account formed pursuant to subsection A of this section may elect  
 290 to finance benefits to its employees by either taxes as set forth in §§ 60.2-526 through 60.2-533, or  
 291 payments in lieu of taxes. Any such election to make payments in lieu of taxes shall be made in  
 292 accordance with the provisions of subdivisions 1, 2 and 4 of subsection B of § 60.2-501. Termination of  
 293 such election to make payments in lieu of taxes shall be made in accordance with subdivision 3 of  
 294 subsection B of § 60.2-501.

295 C. If the election to make payments in lieu of taxes is exercised, payments shall be in an amount  
 296 equivalent to the full amount of regular and extended benefits paid that is attributable to service in the  
 297 employ of such governmental entity. If benefits paid to an individual are based on wages paid by more  
 298 than one employer and one or more employers are liable for payments in lieu of taxes, the amount  
 299 payable to the fund by each employer that is liable for such payments shall be determined in accordance  
 300 with the provisions of § 60.2-504. Notwithstanding the provisions of this subsection, if the final  
 301 adjudication of a disputed claim finds the claimant totally or partially ineligible for benefits, the  
 302 governmental entity shall be liable for any payment made to the claimant during or prior to the appeal  
 303 process, whether made by erroneous statutory interpretation, administrative error, or incorrect wage  
 304 reporting.

305 D. Payments in lieu of taxes by governmental entities as set forth in this section shall be made at

306 such times and in such manner as the Commission may determine and prescribe by regulation.

307 § 60.2-509. Termination of coverage.

308 A. Except as otherwise provided in this section and § 60.2-510, an employing unit shall cease to be  
309 an employer subject to this title as of January 1 of any year subsequent to December 31, 1972, only if:

310 1. The employer files with the Commission a written application for termination of coverage;

311 2. The Commission finds that (i) there were no twenty different days, each day being in a different  
312 week within the preceding calendar year, or (ii) there were no twenty different days, each day being in a  
313 different week within the current calendar year, within which such employing unit employed one or  
314 more individuals in employment subject to this title; and

315 3. The Commission finds that such employing unit did not pay in any calendar quarter in the  
316 preceding or current calendar year for service in employment wages of \$1,500 or more.

317 B. Except as otherwise provided in this section and ~~§ 60.2-510~~, an employing unit as defined in  
318 subdivisions 1 through 4 of subsection A of ~~§ 60.2-213 or § 60.2-214 or § 60.2-215~~, shall cease to be an  
319 employer subject to this title as of January 1 of any year, only if it files with the Commission a written  
320 application for termination of coverage and the Commission finds that no services performed for such  
321 employing unit constitute employment as defined in subdivisions 1 through 4 of subsection A of  
322 ~~§ 60.2-213 or § 60.2-214 or § 60.2-215~~.

323 ~~C.B.~~ Any employing unit which is an employer at the end of any calendar year solely by acquisition  
324 during such year as provided in subdivision 1 of subsection B of § 60.2-210, shall cease to be an  
325 employer subject to this title as of January 1 of the succeeding calendar year without the filing of the  
326 written application required of all other employers, if the Commission finds that there were no twenty  
327 different days, each day being in a different week within the preceding or current calendar year that  
328 such employing unit and its predecessors in title, treated as a single employing unit:

329 1. Employed one or more individuals subject to this title; and

330 2. Did not pay in any calendar quarter in the preceding or current calendar year for service in  
331 employment wages of \$1,500 or more.

332 Whenever any employer, during any completed calendar year, fails to be subject to the payment of  
333 taxes solely because no individual has earned wages from such employer during such calendar year, the  
334 Commission may, after not less than thirty days' notice in writing mailed to such employer at his last  
335 known address, cause such employer to cease to be an employer subject to this title as of January 1 of  
336 the calendar year in which such notice is given.

337 § 60.2-511. How and when taxes payable.

338 Taxes, as set forth in this and the succeeding article, shall accrue and become payable by each  
339 employer for each calendar year in which he is subject to this title. Such taxes shall be based upon  
340 wages payable for employment, as defined in ~~§§ 60.2-212 through 60.2-219~~ § 60.2-218, occurring in  
341 such calendar year. Such taxes shall become due and be paid by each employer to the Commission for  
342 the fund in accordance with such regulations as the Commission may prescribe. Payment of such taxes  
343 and the filing of related returns shall be deemed to have been made as of the date of the postmark  
344 affixed to such payment and returns by the United States Postal Service, or by receipt given by such  
345 representative of the Commission if physical delivery of such payment and related returns is made to an  
346 office of the Commission.

347 § 60.2-532. Pool cost charges.

348 A. As of January 1 of each year, to all experience rating tax rates established pursuant to § 60.2-531,  
349 to all assigned tax rates established pursuant to §§ 60.2-515, 60.2-526, 60.2-527 and 60.2-538, there  
350 shall be added the pool cost charges as determined in subsection B of this section.

351 B. The pool cost charge rate rounded to the nearest one-hundredth of a percent shall be determined  
352 as follows:

353 1. Pool costs for a given calendar year shall be those costs defined in subdivision 2 of this  
354 subsection for the thirty-six consecutive calendar month period ending on June 30 immediately  
355 preceding that calendar year. The pool cost charge rate shall be pool costs divided by payrolls for such  
356 period.

357 2. Pool costs shall consist of (i) benefit charges which cannot be assigned to an individual employer  
358 pursuant to §§ 60.2-210, ~~60.2-212 through 60.2-219~~ and 60.2-218, or subsection C of § 60.2-528, or  
359 cannot be charged to an individual employer due to his becoming an inactive account pursuant to  
360 § 60.2-210 or § 60.2-509, (ii) the difference in the amount the Commission pays pursuant to subdivision  
361 2 of subsection A of § 60.2-609 and the amount the Commission receives pursuant to subdivision 3 of  
362 subsection A of § 60.2-609, and (iii) the difference between the benefit charges of all employers with a  
363 maximum experience rating tax rate and the amount of the taxes resulting from applying the maximum  
364 experience rating tax rate against the payrolls of the same employers. The term "payrolls" as used in this  
365 section shall mean the taxable payroll on which taxes have been paid on or before September 30  
366 immediately following such June 30.

367 3. When the fund balance factor for the most recent twelve-month period ending on June 30 of the

368 immediately preceding calendar year is greater than fifty percent, interest earned on the balance which  
369 shall stand to the credit of the account of the Commonwealth of Virginia in the Unemployment Trust  
370 Fund in the treasury of the United States shall be subtracted from pool costs, except that in no instance  
371 shall pool costs be less than zero.  
372 **2. That §§ 60.2-212 and 60.2-212.1, 60.2-213 through 60.2-217, and 60.2-219 of the Code of**  
373 **Virginia are repealed.**

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