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HOUSE BILL NO. 647

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 60.2-612 and 60.2-618, as it is currently effective and as it may become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 60.2-613.1, relating to eligibility of certain individuals for unemployment compensation benefits.

Patrons—Armstrong, Hope, McClellan and Tyler

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-612 and 60.2-618, as it is currently effective and as it may become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 60.2-613.1 as follows:

§ 60.2-612. Benefit eligibility conditions.

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

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

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

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

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises, including a vessel, 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. This information may be subject to employer verification by the Commission through a program designed for that purpose. The Commission may

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HB647

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.

c. An individual whose type of work is such that it is performed by individuals working two or more shifts in a 24-hour period shall not be deemed unavailable for work if the individual is currently enrolled in one or more classes of education related to employment or is continuing in a certificate or degree program at an institution of higher education, provided that the enrollment would only limit the individual's availability for one shift and the individual is otherwise available to work any of the other shifts.

d. *An individual who was employed part time during at least one-half of the weeks of work in the individual's base period shall be deemed to satisfy the requirements that he be available for work and actively seeking and unable to obtain suitable work if the individual is available for and actively seeking work that is comparable to the individual's part-time work experience in the base period.*

8. He has given notice of resignation to his employer and the employer subsequently made the termination of employment effective prior to the date of termination as given in the notice, but in no case shall unemployment compensation benefits awarded under this subdivision exceed two weeks; 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. For claims filed effective November 28, 1999, and after, this requirement shall be waived for any individual whose unemployment was caused by his employer terminating operations, closing its business or declaring bankruptcy without paying the final wages earned as required by § 40.1-29 of the Code of Virginia. Notwithstanding any other provision of this title, if an employer who terminates operations, closes its business or declares bankruptcy pays an individual his final wages after the period of time prescribed by § 40.1-29 of the Code of Virginia, such payment shall not be offset against the benefits the individual was otherwise entitled to receive and shall not, under any circumstances, cause such individual to be declared overpaid benefits.

10. He is not imprisoned or confined in jail.

11. He participates in reemployment services, such as job search assistance services, if he has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the Commission, unless the Commission determines that (i) such claimant has completed such services or (ii) there is good cause for such claimant's failure to participate in such services.

§ 60.2-613.1. *Additional benefits while in approved training.*

A. *An individual who has exhausted his eligibility for unemployment benefits, including extended benefits under §§ 60.2-610 and 60.2-611 or any federal emergency unemployment compensation program, and who is enrolled in and making satisfactory progress in either a state-approved training program or a job-training program authorized under the Workforce Investment Act of 1998, shall be eligible to receive up to 26 weeks of additional benefits provided that (i) the training is designed to prepare the individual for entry into a high demand occupation and (ii) the individual was:*

1. *Separated from a declining occupation; or*

2. *Involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.*

B. *No otherwise eligible individual shall be denied additional benefits during training under this section by reason of the application of the provisions of subdivision 7 d of § 60.2-612 relating to availability for work, or the provisions of subdivision 3 of § 60.2-618 relating to failure to apply for, or a refusal to accept, suitable work.*

C. *Any additional benefits that are payable pursuant to subsection A shall be reduced dollar-for-dollar for a week in which the individual is also receiving similar stipends or other training*

allowances that can be used for nontraining purposes. As used in this subsection, "similar stipends or other training allowances" means discretionary use, cash-in-hand payments available to the individual to be used as the individual sees fit, but does not mean direct or indirect compensation for training costs such as tuition, books, and supplies. No additional training benefit will be paid where such stipend is equal to or greater than the individual's weekly benefit amount.

D. For the purpose of this section the term "state-approved training program" means a training program approved by the Commission pursuant to § 60.2-613 and 16 VAC 5-60-40.

§ 60.2-618. (Contingent expiration date.) Disqualification for benefits.

An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked 30 days or 240 hours or from any subsequent employing unit:

1. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.

2. a. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work.

b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

(1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such test was conducted at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such test shall have been performed, and a sample collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or shall have been a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

3. a. If it is determined by the Commission that such individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him. The disqualification shall commence with the week in which such failure occurred, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

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

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

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

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

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

184 d. No individual shall be qualified for benefits during any week that such individual, in connection
185 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,
186 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition
187 of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized
188 standards by a laboratory accredited by the United States Department of Health and Human Services, or
189 the College of American Pathology, or the American Association for Clinical Chemistry, or the
190 equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in
191 accordance with the employer's bona fide drug policy. The disqualification shall commence with the
192 week in which such a test was conducted, and shall continue for the period of unemployment next
193 ensuing until he has performed services for an employer (i) during 30 days, whether or not such days
194 are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such
195 employment.

196 e. *No individual who is authorized to be available only for part-time work under the provisions of*
197 *subdivision 7 d of § 60.2-612 shall be denied benefits for refusing an offer of full-time employment.*

198 4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds
199 that such individual, within 36 calendar months immediately preceding such determination or decision,
200 has made a false statement or representation knowing it to be false, or has knowingly failed to disclose
201 a material fact, to obtain or increase any benefit or payment under this title, the unemployment
202 compensation of any other state, or any other program of the federal government which is administered
203 in any way under this title, either for himself or any other person. Additionally, such individual shall be
204 ineligible for benefits until he has repaid the Commission the sum that has been fraudulently obtained.

205 5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his
206 release from prison or jail until he has performed services for an employer for (i) 30 days, whether or
207 not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated
208 from such employment.

209 6. If such separation arose as a condition of the individual's parole or release from a custodial or
210 penal institution and such individual was participating in the Diversion Center Incarceration Program
211 pursuant to § 19.2-316.3.

212 § 60.2-618. (Contingent effective date.) Disqualification for benefits.

213 An individual shall be disqualified for benefits upon separation from the last employing unit for
214 whom he has worked 30 days or 240 hours or from any subsequent employing unit:

215 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
216 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
217 or partially separated from such employment, if the Commission finds such individual is unemployed
218 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not
219 include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily
220 leaving work with an employer to accompany or to join his or her spouse in a new locality, except
221 where an individual leaves employment to accompany his or her spouse to the location of the spouse's
222 new duty assignment if (a) the spouse is on active duty in the military or naval services of the United
223 States; (b) the spouse's relocation to a new military-related assignment is pursuant to a permanent
224 change of station order; (c) the location of the spouse's new duty assignment is not readily accessible
225 from the individual's place of employment; and (d) except for members of the Virginia National Guard
226 relocating to a new assignment within the Commonwealth, the spouse's new duty assignment is located
227 in a state that, pursuant to statute, does not deem a person accompanying a military spouse as a person
228 leaving work voluntarily without good cause. An individual shall not be deemed to have voluntarily left
229 work solely because the separation was in accordance with a seniority-based policy.

230 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
231 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes
232 totally or partially separated from such employment, if the Commission finds such individual is
233 unemployed because he has been discharged for misconduct connected with his work.

234 b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

235 (1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such
236 in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such test was conducted at the direction of his
237 employer in conjunction with the employer's administration and enforcement of a known workplace drug
238 policy. Such test shall have been performed, and a sample collected, in accordance with scientifically
239 recognized standards by a laboratory accredited by the United States Department of Health and Human
240 Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or
241 the equivalent, or shall have been a United States Department of Transportation-qualified drug screen
242 conducted in accordance with the employer's bona fide drug policy. The Commission may consider
243 evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

3. a. If it is determined by the Commission that such individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him. The disqualification shall commence with the week in which such failure occurred, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

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

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

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

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

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

d. No individual shall be qualified for benefits during any week that such individual, in connection with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The disqualification shall commence with the week in which such a test was conducted, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

e. No individual who is authorized to be available only for part-time work under the provisions of subdivision 7 d of § 60.2-612 shall be denied benefits for refusing an offer of full-time employment.

4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds that such individual, within 36 calendar months immediately preceding such determination or decision, has made a false statement or representation knowing it to be false, or has knowingly failed to disclose a material fact, to obtain or increase any benefit or payment under this title, the unemployment compensation of any other state, or any other program of the federal government which is administered in any way under this title, either for himself or any other person. Additionally, such individual shall be ineligible for benefits until he has repaid the Commission the sum that has been fraudulently obtained.

5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his release from prison or jail until he has performed services for an employer for (i) 30 days, whether or not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated from such employment.

6. If such separation arose as a condition of the individual's parole or release from a custodial or penal institution and such individual was participating in the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

2. That the provisions of this act enhancing the benefits payable to an individual pursuant to Title 60.2 may result in a net revenue loss to the Commonwealth of Virginia. Pursuant to § 30-19.03:1.2,

305 the estimated amount of the annual net revenue loss is \$29,100.