

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 303

An Act to amend and reenact §§ 60.2-610 and 60.2-611, as they are currently effective and as they may become effective, of the Code of Virginia and to repeal the third enactment of Chapter 789 of the Acts of Assembly of 2009, relating to extended unemployment benefits.

[S 791]

Approved March 20, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-610 and 60.2-611, as they are currently effective and as they may become effective, of the Code of Virginia are amended and reenacted as follows:

§ 60.2-610. (~~Contingent expiration date, June 12, 2010 - see Editor's notes~~) Extended benefits defined.

A. As used in this article, unless the context clearly requires otherwise, "extended benefit period" means a period which:

1. Begins with the third week following a week for which there is a state "on" indicator; and
2. Ends with either of the following weeks, whichever occurs later:
 - a. The third week after the first week for which there is a state "off" indicator; or
 - b. The thirteenth consecutive week of such period; however, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this Commonwealth.

B. "Rate of insured unemployment," for purposes of subsections H and I of this section, means the percentage derived by dividing:

1. The average weekly number of individuals filing claims for regular compensation in this Commonwealth for weeks of unemployment with respect to the most recent, ~~thirteen~~ 13 consecutive week period, as determined by the Commission on the basis of its reports to the United States Secretary of Labor, by

2. The average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such ~~thirteen-week~~ 13-week period.

C. "Regular benefits" means benefits, other than extended benefits, payable to an individual under this title or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code.

D. "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, payable to an individual under the provisions of § 60.2-611 for weeks of unemployment in his eligibility period.

E. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

F. 1. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

- a. Has received, prior to such week, all of the regular benefits that were available to him under this title or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, in his current benefit year that includes such week;

- b. His benefit year having expired prior to such week, has no, or insufficient, wages or employment on the basis of which he could establish a new benefit year that would include such week; and

- c. (i) Has no right to unemployment benefits or allowances, under the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.), the Automotive Products Trade Act of 1965 (19 U.S.C. § 2001 et seq.) and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada. However, if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

2. For the purposes of subdivision 1 a of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment.

G. "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under 26 U.S.C. § 3304.

H. There is a "state 'on' indicator" for this Commonwealth for a week if:

1. The Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this title:

a. Equaled or exceeded 120 percent of the average of such rates for the corresponding ~~thirteen-week~~ *13-week* period ending in each of the preceding two calendar years; and

b. Equaled or exceeded five percent, provided that the determination of whether there has been a state trigger "on" indicator shall be made as if this subsection did not contain subdivision 1 a, if the rate of insured unemployment as defined in this subsection equaled or exceeded six percent, except that any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator; or

2. With respect to weeks of unemployment beginning on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, *or by an extension thereof or amendment thereto*, the United States Secretary of Labor determines that, for the period consisting of the most recent three months for which data for all states are published before the close of such week, the average rate of total unemployment in this Commonwealth, seasonally adjusted:

a. Equaled or exceeded 110 percent of the average of such rates for either or both of the corresponding three month periods ending in the two preceding calendar years; and

b. Equaled or exceeded a six and one half percent.

I. There is a "state 'off' indicator" for this Commonwealth for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding ~~twelve~~ 12 weeks the requirements of subsection H of this section have not been satisfied.

§ 60.2-610. (~~Contingent effective date, June 12, 2010 - see Editor's notes~~) Extended benefits defined.

A. As used in this article, unless the context clearly requires otherwise, "extended benefit period" means a period which:

1. Begins with the third week following a week for which there is a state "on" indicator; and

2. Ends with either of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state "off" indicator; or

b. The thirteenth consecutive week of such period; however, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this Commonwealth.

B. "Rate of insured unemployment," for purposes of subsections H and I of this section, means the percentage derived by dividing:

1. The average weekly number of individuals filing claims for regular compensation in this Commonwealth for weeks of unemployment with respect to the most recent, ~~thirteen~~ 13 consecutive week period, as determined by the Commission on the basis of its reports to the United States Secretary of Labor, by

2. The average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such ~~thirteen-week~~ *13-week* period.

C. "Regular benefits" means benefits, other than extended benefits, payable to an individual under this title or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code.

D. "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, payable to an individual under the provisions of § 60.2-611 for weeks of unemployment in his eligibility period.

E. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

F. 1. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

a. Has received, prior to such week, all of the regular benefits that were available to him under this title or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, in his current benefit year that includes such week;

b. His benefit year having expired prior to such week, has no, or insufficient, wages or employment on the basis of which he could establish a new benefit year that would include such week; and

c. (i) Has no right to unemployment benefits or allowances, under the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.), the Automotive Products Trade Act of 1965 (19 U.S.C. § 2001 et seq.) and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada. However, if he is seeking such benefits and the appropriate agency finally

determines that he is not entitled to benefits under such law he is considered an exhaustee.

2. For the purposes of subdivision 1 a of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment.

G. "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under 26 U.S.C. § 3304.

H. There is a "state 'on' indicator" for this Commonwealth for a week if ~~the~~:

1. *The Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding ~~twelve~~ 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this title:*

~~1~~ *a. Equaled or exceeded 120 percent of the average of such rates for the corresponding ~~thirteen-week~~ 13-week period ending in each of the preceding two calendar years; and*

~~2~~ *a b. Equaled or exceeded five percent, provided that the determination of whether there has been a state trigger "on" indicator shall be made as if this subsection did not contain subdivision 1 a, if the rate of insured unemployment as defined in this subsection equaled or exceeded six percent, and*

~~b. Except~~ *except that any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator; or*

2. With respect to weeks of unemployment beginning on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, or by an extension thereof or amendment thereto, the United States Secretary of Labor determines that, for the period consisting of the most recent three months for which data for all states are published before the close of such week, the average rate of total unemployment in this Commonwealth, seasonally adjusted:

a. Equaled or exceeded 110 percent of the average of such rates for either or both of the corresponding three month periods ending in the two preceding calendar years; and

b. Equaled or exceeded a six and one half percent.

I. There is a "state 'off' indicator" for this Commonwealth for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding ~~twelve~~ 12 weeks the requirements of subsection H of this section have not been satisfied.

§ 60.2-611. Receipt of extended benefits.

A. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Commission, the provisions of this title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

B. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that for such week:

1. He is an "exhaustee" as defined in subsection F of § 60.2-610;

2. He has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

3. He had during his base period 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this subdivision, "or the equivalent in insured wages" means more than 40 times the individual's most recent weekly benefit amount.

C. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall equal the weekly benefit amount payable to him during his applicable benefit year.

D. The total extended benefit amount payable to any eligible individual for his applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to him under this title in his applicable benefit year;

2. Thirteen times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year; or

3. Thirty-nine times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him under this title for the benefit year.

E. 1. Whenever an extended benefit period is to become effective in this Commonwealth as a result of a state "on" indicator, or an extended benefit period is to be terminated in this Commonwealth as a result of state "off" indicators, the Commission shall make an appropriate public announcement.

2. Computations required by the provisions of subsection B of § 60.2-610 shall be made by the Commission, in accordance with regulations prescribed by the United States Secretary of Labor.

3. An "on" or "off" indicator for this Commonwealth shall be determined without regard to

subdivision 1 of subsection H of § 60.2-610 for any period that waiver of such provisions is authorized under § 203 (d) of the Federal-State Extended Unemployment Compensation Act (26 U.S.C. § 3304) and any amendments thereto, or as authorized by any provision of federal law.

F. 1. Notwithstanding the provisions of subsection A of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the Commission finds that during such period:

a. He failed to accept any offer of suitable work or failed to apply for any suitable work, as defined under subdivision 3 of this subsection, to which he was referred by the Commission; or

b. He failed to actively engage in seeking work as prescribed under subdivision 5 of this subsection.

2. Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision 1 of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

3. a. For purposes of this subsection, "suitable work" means, with respect to any individual, any work which is within the individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of:

(1) The individual's average weekly benefit amount as determined under subsection C of this section, plus

(2) Any amount of supplemental unemployment benefits, as defined in § 501 (c) (17) (D) of the Internal Revenue Code, payable to the individual for such week.

b. Such gross average weekly remuneration shall pay wages equal to the higher of:

(1) The minimum wages provided by § 6 (a) (1) of the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), without regard to any exemption; or

(2) The state or local minimum wage.

c. No individual, however, shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitable work as described in subdivision 3a of this subsection if:

(1) The position was not offered to such individual in writing or was not listed with the Job Service;

(2) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision 3 of § 60.2-618 to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision; or

(3) The individual furnishes satisfactory evidence to the Commission that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision 3 of § 60.2-618 without regard to the definition specified by this subdivision.

4. Notwithstanding the provisions of this subsection, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by § 3304 (a) 5 of the Internal Revenue Code and set forth under subdivision 3 of § 60.2-618.

5. For the purposes of subdivision 1 b of this subsection, an individual shall be treated as actively engaged in seeking work during any week if:

a. The individual has engaged in a systematic and sustained effort to obtain work during such week; and

b. The individual furnishes tangible evidence that he has engaged in such effort during such week.

6. The Job Service shall refer any claimant entitled to extended benefits under this title to any suitable work which meets the criteria prescribed in subdivision 3 of this subsection.

7. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, for weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

8. No claim for extended benefits shall be subject to subdivisions 1, 2, 3 or 6 of this subsection for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. If the Federal-State Extended Unemployment Compensation Act of 1970 is at any time amended to preclude enforcement of any provision of this section, such provision shall not apply to any claim for weeks beginning on the date said amendment becomes effective.

G. 1. Except as provided in subdivision 2 of this subsection, an individual shall not be eligible for extended benefits for any week if:

a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit plan; and

b. No extended benefit period is in effect for such week in such state.

2. Subdivision 1 of this subsection shall not apply to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

H. (~~Contingent expiration date, June 12, 2010 - see notes~~) Effective with respect to weeks beginning in a high unemployment period *that commenced on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, or by an extension thereof or amendment thereto*, subsection D shall be applied by substituting (i) "eighty percent" for "fifty percent" in subdivision D 1; (ii) "twenty" for "thirteen" in subdivision D 2; and (iii) "forty-six" for "thirty-nine" in subdivision D 3. As used in this subsection, "high unemployment period" means any period during which an extended benefit period would be in effect if subdivision H 2 b of § 60.2-610 were applied by substituting "eight percent" for "six and one-half percent."

§ 60.2-611. Receipt of extended benefits.

A. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Commission, the provisions of this title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

B. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that for such week:

1. He is an "exhaustee" as defined in subsection F of § 60.2-610;

2. He has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

3. He had during his base period 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this subdivision, "or the equivalent in insured wages" means more than 40 times the individual's most recent weekly benefit amount.

C. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall equal the weekly benefit amount payable to him during his applicable benefit year.

D. The total extended benefit amount payable to any eligible individual for his applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to him under this title in his applicable benefit year;

2. Thirteen times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year; or

3. Thirty-nine times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him under this title for the benefit year.

E. 1. Whenever an extended benefit period is to become effective in this Commonwealth as a result of a state "on" indicator, or an extended benefit period is to be terminated in this Commonwealth as a result of state "off" indicators, the Commission shall make an appropriate public announcement.

2. Computations required by the provisions of subsection B of § 60.2-610 shall be made by the Commission, in accordance with regulations prescribed by the United States Secretary of Labor.

3. An "on" or "off" indicator for this Commonwealth shall be determined without regard to subdivision 1 of subsection H of § 60.2-610 for any period that waiver of such provisions is authorized under § 203 (d) of the Federal-State Extended Unemployment Compensation Act (26 U.S.C. § 3304) and any amendments thereto, or as authorized by any provision of federal law.

F. 1. Notwithstanding the provisions of subsection A of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the Commission finds that during such period:

a. He failed to accept any offer of suitable work or failed to apply for any suitable work, as defined under subdivision 3 of this subsection, to which he was referred by the Commission; or

b. He failed to actively engage in seeking work as prescribed under subdivision 5 of this subsection.

2. Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision 1 of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

3. a. For purposes of this subsection, "suitable work" means, with respect to any individual, any work which is within the individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of:

(1) The individual's average weekly benefit amount as determined under subsection C of this section, plus

(2) Any amount of supplemental unemployment benefits, as defined in § 501 (c) (17) (D) of the

Internal Revenue Code, payable to the individual for such week.

b. Such gross average weekly remuneration shall pay wages equal to the higher of:

(1) The minimum wages provided by § 6 (a) (1) of the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), without regard to any exemption; or

(2) The state or local minimum wage.

c. No individual, however, shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitable work as described in subdivision 3a of this subsection if:

(1) The position was not offered to such individual in writing or was not listed with the Job Service;

(2) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision 3 of § 60.2-618 to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision; or

(3) The individual furnishes satisfactory evidence to the Commission that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision 3 of § 60.2-618 without regard to the definition specified by this subdivision.

4. Notwithstanding the provisions of this subsection, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by § 3304 (a) 5 of the Internal Revenue Code and set forth under subdivision 3 of § 60.2-618.

5. For the purposes of subdivision 1 b of this subsection, an individual shall be treated as actively engaged in seeking work during any week if:

a. The individual has engaged in a systematic and sustained effort to obtain work during such week; and

b. The individual furnishes tangible evidence that he has engaged in such effort during such week.

6. The Job Service shall refer any claimant entitled to extended benefits under this title to any suitable work which meets the criteria prescribed in subdivision 3 of this subsection.

7. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, for weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

8. No claim for extended benefits shall be subject to subdivisions 1, 2, 3 or 6 of this subsection for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. If the Federal-State Extended Unemployment Compensation Act of 1970 is at any time amended to preclude enforcement of any provision of this section, such provision shall not apply to any claim for weeks beginning on the date said amendment becomes effective.

G. 1. Except as provided in subdivision 2 of this subsection, an individual shall not be eligible for extended benefits for any week if:

a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit plan; and

b. No extended benefit period is in effect for such week in such state.

2. Subdivision 1 of this subsection shall not apply to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

H. Effective with respect to weeks beginning in a high unemployment period that commenced on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, or by an extension thereof or amendment thereto, subsection D shall be applied by substituting (i) "eighty percent" for "fifty percent" in subdivision D 1; (ii) "twenty" for "thirteen" in subdivision D 2; and (iii) "forty-six" for "thirty-nine" in subdivision D 3. As used in this subsection, "high unemployment period" means any period during which an extended benefit period would be in effect if subdivision H 2 b of § 60.2-610 were applied by substituting "eight percent" for "six and one-half percent."

2. That the third enactment of Chapter 789 of the Acts of Assembly of 2009 is repealed.