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HOUSE BILL NO. 1372

Offered January 9, 2013

Prefiled December 10, 2012

A BILL to amend and reenact § 60.2-618, as it is currently effective and as it may become effective, of the Code of Virginia, relating to disqualification for unemployment compensation benefits; loss of certification or licensure as misconduct.

Patrons—Head, Albo, Hodges, Minchew, Ramadan, Watson and Webert

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 60.2-618, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted as follows:

§ 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.

(5) An employee's loss of or failure to renew a license or certification that is a requisite of the position held by the employee, provided the employer is not at fault for the employee's loss of or failure to renew the license or certification. 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

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59 to accept suitable work when offered him. The disqualification shall commence with the week in which
60 such failure occurred, and shall continue for the period of unemployment next ensuing until he has
61 performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii)
62 for 240 hours, and subsequently becomes totally or partially separated from such employment.

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

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

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

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

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

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

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

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

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

100 **§ 60.2-618. (Contingent effective date) Disqualification for benefits.**

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

103 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
104 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
105 or partially separated from such employment, if the Commission finds such individual is unemployed
106 because he left work voluntarily without good cause. As used in this chapter, "good cause" shall not
107 include ~~(i)~~ (a) voluntarily leaving work with an employer to become self-employed or ~~(ii)~~ (b) voluntarily
108 leaving work with an employer to accompany or to join his or her spouse in a new locality, except
109 where an individual leaves employment to accompany his or her spouse to the location of the spouse's
110 new duty assignment if ~~(a)~~ (1) the spouse is on active duty in the military or naval services of the
111 United States; ~~(b)~~ (2) the spouse's relocation to a new military-related assignment is pursuant to a
112 permanent change of station order; ~~(c)~~ (3) the location of the spouse's new duty assignment is not
113 readily accessible from the individual's place of employment; and ~~(d)~~ (4) except for members of the
114 Virginia National Guard relocating to a new assignment within the Commonwealth, the spouse's new
115 duty assignment is located in a state that, pursuant to statute, does not deem a person accompanying a
116 military spouse as a person leaving work voluntarily without good cause. An individual shall not be
117 deemed to have voluntarily left work solely because the separation was in accordance with a
118 seniority-based policy.

119 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
120 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.

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(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.

(5) *An employee's loss of or failure to renew a license or certification that is a requisite of the position held by the employee, provided the employer is not at fault for the employee's loss of or failure to renew the license or certification. 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)~~ (a) during 30 days, whether or not such days are consecutive, or ~~(ii)~~ (b) for 240 hours, and subsequently becomes totally or partially separated from such employment.

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187 5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his
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