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HOUSE BILL NO. 2037

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on January 28, 2021)

(Patron Prior to Substitute—Delegate Tran)

A BILL to amend and reenact §§ 60.2-528 and 60.2-618 of the Code of Virginia, relating to unemployment compensation; benefits; suitable work; benefits charges.

Be it enacted by the General Assembly of Virginia:

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

§ 60.2-528. Individual benefit charges.

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

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

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

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

B. 1. The employing unit from whom such individual was separated, resulting in the current period of unemployment, shall be the most recent employing unit for whom such individual has performed services for remuneration (i) during 30 days, whether or not such days are consecutive, or (ii) during 240 hours. If such individual's unemployment is caused by separation from an employer, such individual's "benefit charges" for such period of unemployment shall be deemed the responsibility of the last employer for (i) 30 days or (ii) 240 hours prior to such period of unemployment.

2. Any employer charged with benefits paid shall be notified of the charges quarterly by the Commission. The amount specified shall be conclusive on the employer unless, not later than 30 days after the notice of benefit charges was mailed to its last known address or otherwise delivered to it, the employer files an appeal with the Commission, setting forth the grounds for such an appeal. Proceedings on appeal to the Commission regarding the amount of benefit charges under this subsection or a redetermination of such amount shall be in accordance with the provisions of § 60.2-500. The decision of the Commission shall be subject to the provisions of § 60.2-500. Any appeal perfected pursuant to the provisions of this section shall not address any issue involving the merits or conditions of a claimant's separation from employment.

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

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

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

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

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

5. An individual hired to replace a member of the Reserve of the United States Armed Forces or the National Guard called into active duty in connection with an international conflict and whose employment is terminated concurrent with and because of that member's return from active duty;

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

7. An individual participating as an inmate in (i) state or local work release programs pursuant to § 53.1-60 or 53.1-131; (ii) community residential programs pursuant to §§ 53.1-177, 53.1-178, and 53.1-179; or (iii) any similar work release program, whose separation from work arose from conditions of release or parole from such program;

8. An individual who was unable to work at his regular employment due to a disaster for which the Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of the employer's business. In no case shall more than four weeks of benefit charges be waived; ø

9. An individual who leaves employment to accompany his spouse to the location of the spouse's

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60 new duty assignment if (i) the spouse is on active duty in the military or naval services of the United
61 States; (ii) the spouse's relocation to a new military-related assignment is pursuant to a permanent
62 change of station order; (iii) the location of the spouse's new duty assignment is not readily accessible
63 from the individual's place of employment; and (iv) the spouse's new duty assignment is located in a
64 state that, pursuant to statute, does not deem a person accompanying a military spouse as a person
65 leaving work voluntarily without good cause; or

66 *10. An individual with respect to any weeks in which benefits are claimed and received after such*
67 *date as that individual refused to accept an offer of work for the conditions described in subdivision 3 c*
68 *(4) or (5) of § 60.2-618. However, this subdivision shall not apply if the individual has refused to accept*
69 *an offer of work from the employing unit from which the individual was separated for the condition*
70 *described in subdivision 3 c (5) of § 60.2-618.*

71 **§ 60.2-618. Disqualification for benefits.**

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

74 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
75 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
76 or partially separated from such employment, if the Commission finds such individual is unemployed
77 because he left work voluntarily without good cause.

78 If (a) at the time of commencing employment with such employing unit an individual is enrolled in
79 an accredited academic program of study provided by an institution of higher education for students that
80 have been awarded a baccalaureate degree, which academic program culminates in the awarding of a
81 master's, doctoral, or professional degree; (b) the individual's employment with such employing unit
82 commenced and ended during the period between spring and fall semesters of the academic program in
83 which the individual is enrolled; and (c) the individual returned to such academic program following his
84 separation from such employing unit, there shall be a rebuttable presumption that the individual left
85 work voluntarily.

86 As used in this chapter, "good cause" shall not include (1) voluntarily leaving work with an
87 employer to become self-employed or (2) voluntarily leaving work with an employer to accompany or to
88 join his or her spouse in a new locality, except where an individual leaves employment to accompany a
89 spouse to the location of the spouse's new duty assignment if (A) the spouse is on active duty in the
90 military or naval services of the United States; (B) the spouse's relocation to a new military-related
91 assignment is pursuant to a permanent change of station order; (C) the location of the spouse's new duty
92 assignment is not readily accessible from the individual's place of employment; and (D) except for
93 members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the
94 spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person
95 accompanying a military spouse as a person leaving work voluntarily without good cause. An individual
96 shall not be deemed to have voluntarily left work solely because the separation was in accordance with
97 a seniority-based policy.

98 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
99 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes
100 totally or partially separated from such employment, if the Commission finds such individual is
101 unemployed because he has been discharged for misconduct connected with his work.

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

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

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

117 (3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an
118 employee of an employer licensed or certified by the Commonwealth, which violation would cause the
119 employer to be sanctioned or have its license or certification suspended by the Commonwealth. The
120 Commission may consider evidence of mitigating circumstances in determining whether misconduct
121 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 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;

(4) *To the extent permissible by federal law, if the individual presents satisfactory evidence that such individual (i) has tested positive for COVID-19, (ii) has been otherwise directed by a physician to quarantine due to COVID-19, or (iii) is providing care for an immediate family member who has tested positive for COVID-19. For the purposes of this subdivision, "immediate family member" includes a parent, spouse, natural or adopted child living in the individual's household, or foster child whose care has been entrusted to the individual; or*

(5) *If the individual has a reasonable belief, based on satisfactory evidence, that the workplace is unsafe because it does not meet governmental-mandated COVID-19 health and safety standards for the workplace, including standards issued by the U.S. Occupational Safety and Health Administration, the Department of Labor and Industry, or the Department of Health, or through an executive order or directive issued by the Governor.*

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.

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. Overpayments that have been fraudulently obtained and any penalty assessed against the individual pursuant to § 60.2-636 shall be recoverable as provided in § 60.2-633.

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

183 penal institution and such individual was participating in the community corrections alternative program
184 pursuant to § 19.2-316.4.
185 **2. That the provisions of this act shall expire 30 days after the expiration or revocation of all**
186 **states of emergency declared by the Governor related to the COVID-19 pandemic.**