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SENATE BILL NO. 536

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 22, 2024)

(Patron Prior to Substitute—Senator Bagby)

A BILL to amend and reenact §§ 60.2-528, 60.2-612.1, 60.2-619, and 60.2-633 of the Code of Virginia, relating to unemployment compensation; continuation of benefits; repayment of overpayments.

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-528, 60.2-612.1, 60.2-619, and 60.2-633 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

SENATE SUBSTITUTE

SB536S1

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

10. *An individual who has received any overpayment of benefits that the Commission waived the requirement to repay pursuant to subsection A of § 60.2-633.*

§ 60.2-612.1. Program integrity.

A. In order to verify that an individual is eligible to receive benefits, the Commission shall conduct all mandatory and recommended program integrity activities as identified by the U.S. Department of Labor Employment and Training Administration and the U.S. Department of Labor Office of Inspector General.

B. The Commission shall perform a full eligibility review of suspicious or potentially improper claims. In determining if a claim is suspicious or potentially improper, the Commission shall consider the factors utilized by the Integrity Data Hub and any additional factors that may be appropriate, including commonalities in physical addresses, mailing addresses, internet protocol addresses, email addresses, multi-factor authentication, and bank accounts.

C. The Commission shall recover ~~any improper overpayment~~ *overpayments* of benefits ~~to the fullest extent authorized by this title and federal law as provided in § 60.2-633.~~

D. The Department of Social Services, the Department of Medical Assistance Services, and the Department of Housing and Community Development, upon receipt of notification that an individual enrolled in any of such department's public assistance programs has become employed, shall notify the Commission of such fact in order for the Commission to determine the individual's eligibility for benefits.

E. The Commission may enter into a memorandum of understanding with any state agency necessary to implement the provisions of this section.

F. The Commission shall report by December 1 of each year to the Commission on Unemployment Compensation addressing the implementation and enforcement of the provisions of this section. The report shall include:

1. The Commission's general program integrity processes, including tools, resources, and databases utilized, to the extent that sharing the information does not jeopardize program integrity measures;

2. A description of efforts to identify, prevent, and recover improper overpayments of benefits and fraudulent payments and measures being taken to improve such efforts;

3. The type and amount of improper payments detected retroactively;

4. The type and amount of improper payments prevented;

5. Moneys saved in preventing improper overpayments and, if any, in recouping improper overpayments; and

6. An explanation for the nonrecovery of overpayments, including the application of any allowable recovery exceptions.

§ 60.2-619. Determinations and decisions by deputy; appeals therefrom.

A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim. On the basis of the facts found by him, the deputy shall either:

a. Determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission, which tribunal or Commission shall make its determination in accordance with the procedure described in § 60.2-620.

2. When the payment or denial of benefits will be determined by the provisions of subdivision A 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to any appeal tribunal, which shall make its determination in accordance with the procedure described in § 60.2-620.

B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant and all subsequent employing units, and any reimbursable employing units that may be liable for reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall not have any effect upon the claim for benefits. *If a claimant has had a determination of initial eligibility for benefits under this chapter, as evidenced by the issuance of compensation or waiting-week credit, payments shall continue, subject to a presumption of continued eligibility and in accordance with the terms of this subsection, until a determination is made that provides the claimant notice and an opportunity to be heard. When a question concerning continued eligibility for benefits arises, a determination shall be*

made as to whether it affects future weeks of benefits or only past weeks. With respect to future weeks, presumptive payment shall not be made until but no later than the end of the week following the week in which such issue arises, regardless of the type of issue. With respect to past weeks, presumptive payment shall be issued immediately, regardless of the type of issue. Notice shall be given to individuals who receive payments under such presumption that pending eligibility may affect their entitlement to the payment and may result in an overpayment that requires repayment.

C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by mailing such notice to the claimant's last known address. In addition, notice of any determination that involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be promptly given in the same manner to the most recent 30-day or 240-hour employing unit by whom the claimant was last employed and any subsequent employing unit which is a party. The Commission may dispense with the giving of notice of any determination to any employing unit, and such employing unit shall not be entitled to such notice if it has failed to respond timely or adequately to a written request of the Commission for information, as required by § 60.2-528.1, from which the deputy may have determined that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks.

D. Such determination or decision shall be final unless the claimant or any such employing unit files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or (iii) within 30 days after such notification was mailed to the last known address of an interstate claimant. For good cause shown, the 30-day period may be extended. A claim that the Commission has determined to be invalid because of monetary ineligibility shall first be subject to review only upon a request for redetermination pursuant to § 60.2-629. The Commission shall issue a new monetary determination as a result of such review, and such monetary determination shall become final unless appealed by the claimant within 30 days of the date of mailing. The Commission shall clearly set out the process for requesting a redetermination and the process for filing an appeal on each monetary determination issued. Monetary ineligibility does not include an appeal on the effective date of the claim, unless the claimant has requested and received a redetermination of the monetary determination pursuant to § 60.2-629.

E. Benefits shall be paid promptly in accordance with a determination or redetermination under this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision, regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision. If a decision of an appeal tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid until such time as a court decision has become final so that no further appeal can be taken. If an appeal is taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the employer under § 60.2-530 only when, and as of the date on which, as the result of an appeal, the courts finally determine that the Commission should have awarded benefits to the claimant or claimants involved in such appeal.

§ 60.2-633. Receiving benefits to which not entitled.

A. Any person who has received any sum as benefits under this title to which he was not entitled shall be liable to repay such sum to the Commission. For purposes of this section, "benefits under this title" includes benefits under an unemployment benefit program of the United States or of any other state. In the event the claimant does not refund the overpayment, the Commission shall deduct from any future benefits such sum payable to him under this title. ~~However, if an overpayment of benefits under this chapter, but not under an unemployment benefit program of the United States or of any other state, occurred due to administrative error, The Commission shall waive the requirement to repay the overpayment after an individual case review if (i) the overpayment was made without fault on the part of the individual and (ii) requiring repayment would be contrary to equity and good conscience. Subject to the requirements of this section, the Commission may grant a waiver of the obligation to repay an overpayment to an individual who has a pending appeal with the Commission.~~

For the purposes of this section:

1. An overpayment made "without fault on the part of the individual" shall include overpayments that (i) result from administrative error; (ii) are the result of inducement, solicitation, or coercion on the part of the employer; or (iii) result from the employer's failure to respond timely or adequately to the Commission's request for information, as required by § 60.2-528.1. An overpayment shall not be

183 considered "without fault on the part of the individual" if such overpayment was the result of (a) a
184 reversal in the appeals process, unless the employer failed to respond timely or adequately to the
185 Commission's request for information regarding the individual's separation from employment; (b) a
186 programming, technological, or automatic system error not directly associated with an individual claim
187 that results in erroneous payments to a group of individuals; or (c) fraud.

188 2. It shall be contrary to equity and good conscience if requiring repayment of an overpayment
189 would deprive the individual of the income required to provide for basic necessities, including shelter,
190 food, medicine, child care, or any other essential living expense.

191 B. For any overpayment where repayment is not forgiven, the Commission shall have the authority to
192 negotiate the terms of repayment, which shall include (i) deducting up to 50 percent of the payable
193 amount for any future week of benefits claimed, rounded down to the next lowest dollar until the
194 overpayment is satisfied; (ii) forgoing collection of the payable amount until the recipient has found
195 employment as defined in § 60.2-212; or (iii) determining and instituting an individualized repayment
196 plan. The Commission shall collect an overpayment of benefits under this chapter caused by
197 administrative error only by offset against future benefits or a negotiated repayment plan; however, the
198 Commission may institute any other method of collection if the individual fails to enter into or comply
199 with the terms of the repayment plan. Administrative error shall not include decisions reversed in the
200 appeals process. ~~In addition, the overpayment~~

201 *Overpayments where the obligation to repay has not been waived* may be collectible by civil action
202 in the name of the Commission. Amounts collected in this manner may be subject to an interest charge
203 as prescribed in § 58.1-15 from the date of judgment and may be subject to fees and costs. Collection
204 activities for any benefit overpayment established of ~~five dollars~~ \$5 or less may be suspended. The
205 Commission may, for good cause, determine as uncollectible and discharge from its records any benefit
206 overpayment which remains unpaid after the expiration of seven years from the date such overpayment
207 was determined, or immediately upon the death of such person or upon his discharge in bankruptcy
208 occurring subsequently to the determination of overpayment. Any existing overpayment balance not
209 equal to an even dollar amount shall be rounded to the next lowest even dollar amount.

210 ~~B.~~ C. The Commission is authorized to accept repayment of benefit overpayments by use of a credit
211 card. The Virginia Employment Commission shall add to such payment a service charge for the
212 acceptance of such card. Such service charge shall not exceed the percentage charged to the Virginia
213 Employment Commission for use of such card.

214 D. *No determination with respect to benefit overpayments shall be issued until after a determination*
215 *or decision that finds a claimant ineligible or disqualified for benefits previously paid has become final.*

216 E. *The Commission shall notify each individual with an unpaid overpayment of benefits established*
217 *for claim weeks commencing on or after March 15, 2020, under this chapter or any unemployment*
218 *benefit program of the United States or any other state, that such individual may be entitled to a waiver*
219 *of the obligation to repay such overpayment and shall provide 30 days from the date of such*
220 *notification for the individual to request a waiver of repayment. For good cause shown, the Commission*
221 *may extend the 30-day period for requesting a waiver. The Commission shall conduct an individualized*
222 *review and adjudicate any request received in accordance with the provisions of § 60.2-619, and any*
223 *individual who is denied a waiver shall have the right to appeal the Commission's decision as provided*
224 *in subsection D of § 60.2-619. In ruling on any waiver request, the Commission shall apply the*
225 *provisions of this chapter or, if applicable, the overpayment waiver provisions of any unemployment*
226 *compensation program of the United States.*

227 ~~E.~~ F. Final orders of the Commission with respect to benefit overpayments may be recorded,
228 enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the
229 Commissioner as may be appropriate.

230 G. *All costs that result from implementing the provisions of this section shall be incurred by federal*
231 *administrative grants, where permitted, and any remaining costs shall be incurred by the general fund.*
232 *For an overpayment waived pursuant to this section, no individual employer shall be responsible for (i)*
233 *reimbursing benefits or (ii) benefits charges, except as provided in § 60.2-528.1.*