

HOUSE BILL NO. 153

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate March)

A BILL to amend and reenact § 60.2-612 of the Code of Virginia, relating to unemployment compensation; testing for the use of nonprescribed controlled substances.

Be it enacted by the General Assembly of Virginia:

1. That § 60.2-612 of the Code of Virginia is amended and reenacted 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

27 (2) He does not belong to a grade or class of workers of which, immediately before the
28 commencement of the labor dispute, there were members employed at the premises, including a vessel, at
29 which the labor dispute occurs, any of whom are participating in or financing or directly interested in the
30 dispute.

31 b. If separate branches of work which are commonly conducted as separate businesses at separate
32 premises are conducted in separate departments of the same premises, each such department shall, for the
33 purposes of this subdivision, be deemed to be a separate factory, establishment or other premises.
34 Membership in a union, or the payment of regular dues to a bona fide labor organization, however, shall
35 not alone constitute financing a labor dispute.

36 3. He is not receiving, has not received or is not seeking unemployment benefits under an
37 unemployment compensation law of any other state or of the United States; however, if the appropriate
38 agency of such other state or of the United States finally determines that he is not entitled to such
39 unemployment benefits, this subdivision shall not apply.

40 4. He is not on a bona fide paid vacation. If an individual is paid vacation pay for any week in an
41 amount less than the individual's weekly benefit amount his eligibility for benefits shall be computed
42 under the provisions of § 60.2-603.

43 5. He has registered for work and thereafter has continued to report at an employment office in
44 accordance with such regulations as the Commission may prescribe. The Commission may, by regulation,
45 waive or alter either or both of the requirements of this subdivision for certain types of cases when it finds
46 that compliance with such requirements would be oppressive, or would be inconsistent with the purposes
47 of this title.

48 6. He has made a claim for benefits in accordance with regulations the Commission may prescribe.

49 7. a. He is able to work, is available for work, and is actively seeking and unable to obtain suitable
50 work. Every claimant who is totally unemployed shall report to the Commission the names of employers
51 contacted each week in his effort to obtain work. This information may be subject to employer verification
52 by the Commission through a program designed for that purpose. The Commission may determine that
53 registration by a claimant with the Virginia State Job Service may constitute a valid employer contact and

54 satisfy the search for work requirement of this subsection in labor market areas where job opportunities
55 are limited. The Commission may determine that an individual, whose usual and customary means of
56 soliciting work in his occupation is through contact with a single hiring hall which makes contacts with
57 multiple employers on behalf of the claimant, meets the requirement that he be actively seeking and unable
58 to obtain suitable work by contacting that hiring hall alone. In areas of high unemployment, as determined
59 by the Commission, the Commission has the authority to adjust the requirement that he be actively seeking
60 and unable to obtain suitable work.

61 b. An individual who leaves the normal labor market area of the individual for the major portion
62 of any week is presumed to be unavailable for work within the meaning of this section. This presumption
63 may be overcome if the individual establishes to the satisfaction of the Commission that the individual
64 has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor
65 market area in which the individual spent the major portion of the week to which the presumption applies.

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

72 8. He has given notice of resignation to his employer and the employer subsequently made the
73 termination of employment effective prior to the date of termination as given in the notice, but in no case
74 shall unemployment compensation benefits awarded under this subdivision exceed two weeks; provided,
75 that the claimant could not establish good cause for leaving work pursuant to § 60.2-618 and was not
76 discharged for misconduct as provided in § 60.2-618.

77 9. Beginning January 6, 1991, he has served a waiting period of one week during which he was
78 eligible for benefits under this section in all other respects and has not received benefits, except that only
79 one waiting week shall be required of such individual within any benefit year. For claims filed effective
80 November 28, 1999, and after, this requirement shall be waived for any individual whose unemployment

81 was caused by his employer terminating operations, closing its business or declaring bankruptcy without
82 paying the final wages earned as required by § 40.1-29 of the Code of Virginia. Notwithstanding any other
83 provision of this title, if an employer who terminates operations, closes its business or declares bankruptcy
84 pays an individual his final wages after the period of time prescribed by § 40.1-29 of the Code of Virginia,
85 such payment shall not be offset against the benefits the individual was otherwise entitled to receive and
86 shall not, under any circumstances, cause such individual to be declared overpaid benefits.

87 10. He is not imprisoned or confined in jail.

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

93 12. If the only suitable work available for the individual is in an occupation listed in 20 C.F.R. §
94 603 that regularly requires drug testing, the individual has provided the Commission, at the time of
95 submitting a claim for benefits required pursuant to subdivision 6, the results of a drug test that (i) meets
96 the standards of the U.S. Department of Transportation or is performed in accordance with scientifically
97 recognized standards by a laboratory accredited by the U.S. Department of Health and Human Services,
98 the College of American Pathologists, or the American Association for Clinical Chemistry, or the
99 equivalent, and (ii) is negative for the use of a nonprescribed controlled substance, identified as such in
100 Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1. Any such individual who fails or refuses to provide the
101 results of such a test or who tests positive for the use of a nonprescribed controlled substance shall be
102 ineligible to receive benefits.

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