

SENATE BILL NO. 219

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator McPike)

A BILL to amend and reenact §§ 30-222, 60.2-111, and 60.2-619, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 1 of Title 60.2 sections numbered 60.2-121.2 and 60.2-121.3, relating to Virginia Employment Commission; administrative reforms; reporting requirements; electronic submissions; Appeals Ombudsman position established.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 30-222, 60.2-111, and 60.2-619, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 1 of Title 60.2 sections numbered 60.2-121.2 and 60.2-121.3 as follows:**

**§ 30-222. Powers and duties of the Commission; subcommittee established.**

A. The Commission shall have the following powers and duties:

- 1. Evaluate the impact of existing statutes and proposed legislation on unemployment compensation and the Unemployment Trust Fund;
- 2. Assess the Commonwealth's unemployment compensation programs and examine ways to enhance effectiveness;
- 3. Monitor the current status and long-term projections for the Unemployment Trust Fund; and
- 4. Report annually its findings and recommendations to the General Assembly and the Governor.

B. Within the Commission there shall be established a subcommittee on unemployment insurance (UI) that shall be responsible for monitoring the Virginia Employment Commission's management of the Commonwealth's unemployment insurance system. The subcommittee shall be responsible for monitoring the Virginia Employment Commission's following operations:

- 27 1. Key performance metrics related to unemployment insurance backlogs;
- 28 2. Efforts to identify, prevent, and recover incorrect unemployment insurance benefit payments,
- 29 including fraudulent payments;
- 30 3. Modernization of the unemployment insurance information technology system and subsequent
- 31 efforts to improve functionality;
- 32 4. Expenditures of state funds appropriated for unemployment insurance administration; and
- 33 5. Implementation of recommendations from the 2021 Operations and Performance of the Virginia
- 34 Employment Commission report by the Joint Legislative Audit and Review Commission.

35 C. The subcommittee established in subsection B shall include (i) at least one employee

36 stakeholder representative, (ii) at least one employer representative, (iii) at least one member of the

37 Commission on Unemployment Compensation, and (iv) at least one member from each of the following

38 committees: the House Committee on Appropriations, the House Committee on Commerce and Energy,

39 the Senate Committee on Commerce and Labor, and the Senate Committee on Finance and

40 Appropriations.

41 D. The subcommittee established in subsection B shall meet at least once each quarter from July

42 1, 2022, through June 30, 2025, and shall report at least annually, beginning on December 1, 2022, to the

43 House Committee on Appropriations, the House Committee on Commerce and Energy, the Senate

44 Committee on Commerce and Labor, and the Senate Committee on Finance and Appropriations.

45 E. The Commission shall periodically convene an advisory committee composed of an employer

46 representative, an employee representative, a labor economist, a finance expert, a labor law expert, and

47 any other stakeholders or subject matter experts deemed appropriate by the Commission for the following

48 purposes: (i) to review UI benefits, replacement ratios, and reciprocity rates; (ii) to identify factors that

49 affect UI benefits and reciprocity, such as design of UI benefit calculations or UI eligibility criteria; (iii)

50 to assess the advantages and disadvantages of potential changes to benefits; and (iv) to recommend to the

51 Commission options to change benefit levels when needed. This advisory committee shall be established

52 by December 1, 2022, and shall be convened at least every five years thereafter.

53 **§ 60.2-111. Duties and powers of Commission; reporting requirements.**

54 A. It shall be the duty of the Commission to administer this title. It shall have power and authority  
55 to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures,  
56 require such reports, make such investigations, and take such other action, including the appointment of  
57 advisory groups, as it deems necessary or suitable to that end. Such rules and regulations shall be subject  
58 to the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, except as to the subject matter of  
59 subdivisions 2 and 3 of § 60.2-515, which shall become effective in the manner prescribed by § 2.2-4103.  
60 The Commission shall determine its own organization and methods of procedure in accordance with  
61 provisions of this title, and shall have an official seal which shall be judicially noticed.

62 B. The Commission shall prepare an annual balance sheet of the moneys in the fund and in the  
63 Unemployment Trust Fund to the credit of the Commonwealth in which there shall be provided, if  
64 possible, a reserve against the liability in future years to pay benefits in excess of the ~~then-current~~ then-  
65 current taxes. That reserve shall be set up by the Commission in accordance with accepted actuarial  
66 principles on the basis of statistics of employment, business activity, and other relevant factors for the  
67 longest possible period. Whenever the Commission believes that a change in tax or benefit rates is  
68 necessary to protect the solvency of the Fund, it shall promptly so inform the Governor and the General  
69 Assembly and make recommendations with respect thereto.

70 C. In preparing the annual balance sheet required by subsection B, the Commission shall regularly  
71 track metrics related to unemployment insurance benefits, establish a mechanism to help assess the  
72 adequacy of benefits, and examine metrics related to recipiency, average benefit levels, and benefit income  
73 replacement ratios. The annual balance sheet shall include the following calculations: (i) the average  
74 unemployment insurance benefit levels, (ii) the average income replacement of unemployment insurance  
75 benefits, and (iii) the recipiency rate for unemployment insurance benefits in the Commonwealth.

76 D. The Commission, as part of its biennial strategic plan submitted to the Department of Planning  
77 and Budget, shall develop and maintain a comprehensive unemployment insurance Resiliency Plan that  
78 describes specific actions the Commission will take, depending on the level of increase in unemployment  
79 insurance (UI) claims, to address staffing, communications, and other relevant aspects of operations to  
80 ensure continued efficient and effective administration of the UI program. The Resiliency Plan shall

81 include proposed actions consistent with the following objectives to effectively prepare for periods of high  
82 unemployment:

83 1. Develop specific strategies or steps the Commission will take to modify staffing levels in  
84 response to incidents that increase UI program demand. These strategies or steps shall (i) include a staffing  
85 plan for varying levels of UI workload volume, (ii) cover several scenarios that may affect UI assistance  
86 services, (iii) explain how existing staff would be reallocated to high-priority functions in response to high  
87 demand, and (iv) describe how the Commission's hiring process will be streamlined to fill key vacant  
88 positions such as adjudication and appeals staff.

89 2. Develop specific strategies or steps the Commission will take to modify policies, procedures, or  
90 processes in response to high demands on its services.

91 3. Outline a strategy for clearly communicating key UI program changes to customers. This  
92 strategy shall indicate which staff will be responsible for different types of communications and include  
93 several communications goals, such as clearly conveying UI program and policy changes.

94 4. Outline a strategy for clearly communicating important UI information to Commission staff, the  
95 public, and the General Assembly.

96 5. Formalize a policy for prioritizing and assigning claims for adjudication during periods of high  
97 claims volume. This policy shall detail how prioritization may change in response to claims volume and  
98 state that the policy of the Commission is to generally prioritize resolving older claims before newer  
99 claims.

100 6. Identify other tactical actions to be taken to ensure the continuity of UI claims processing and  
101 customer service.

102 **§ 60.2-121.2. Electronic submission of information; payments.**

103 A. Each employer subject to the provisions of this title shall submit claim-related forms, including  
104 separation information, using an electronic format as prescribed by the Commission. An employer shall  
105 submit any other information related to a claim, as defined in § 60.2-528.1, at any time when requested  
106 by the Commission, to the Commission by electronic means, unless the employer has been granted a  
107 waiver by the Commission. The Commission may also require, at any time, that an employer submit

108 unemployment insurance tax payments electronically, unless the employer has been granted a waiver by  
109 the Commission.

110 B. The Commission may grant a waiver to an employer from providing information or payments  
111 electronically pursuant to this section at any time. The Commission may grant a waiver only if the  
112 Commission finds that the electronic submission requirement creates an unreasonable burden on the  
113 employer. All requests for a waiver shall be submitted in writing. The Commission shall promulgate  
114 regulations to establish criteria for granting such waiver to individual employers.

115 **§ 60.2-121.3. Appeals Ombudsman; established; responsibilities.**

116 A. The Commission shall create the Office of the Appeals Ombudsman (the Office) and shall  
117 appoint an Appeals Ombudsman to head the Office. The Appeals Ombudsman shall provide neutral  
118 educational information and assistance to, shall protect the interests of, and shall ensure that due process  
119 is afforded to all persons seeking assistance in appeals proceedings brought pursuant to Chapter 6 (§ 60.2-  
120 600 et seq.). The Appeals Ombudsman shall be an attorney licensed by the Virginia State Bar, in active  
121 status, and in good standing. Subject to annual appropriations, the Appeals Ombudsman shall employ  
122 sufficient personnel to carry out the duties and powers prescribed by this section. The Appeals  
123 Ombudsman and personnel of the Office shall carry out their duties with impartiality and shall not serve  
124 as an advocate for any person or provide legal advice.

125 B. The Appeals Ombudsman shall maintain data on inquiries received related to the appeals  
126 process and claims undergoing appeal, the types of assistance requested, and actions taken and the  
127 disposition of each such matter. The Appeals Ombudsman shall report information summarizing this data,  
128 including outcomes of individual cases, without disclosing individual-level identifying data, to the  
129 Commission at least once annually. The Appeals Ombudsman shall carry out any additional activities as  
130 the Commission determines to be appropriate.

131 C. All memoranda, work products, and other materials contained in the case files of the Appeals  
132 Ombudsman and personnel of the Office shall be confidential. Any communication between the Appeals  
133 Ombudsman and personnel of the Office and a person receiving assistance that is made during or in  
134 connection with the provision of services of the Appeals Ombudsman and personnel of the Office shall

135 be confidential. Confidential materials and communications shall not be subject to disclosure and shall  
136 not be admissible in any judicial or administrative proceeding except where (i) a threat to inflict bodily  
137 injury is made; (ii) communications are intentionally used to plan, attempt to commit, or commit a crime  
138 or conceal an ongoing crime; (iii) a complaint is made against the Appeals Ombudsman or personnel of  
139 the Office by a person receiving assistance to the extent necessary for the complainant to prove misconduct  
140 or the Appeals Ombudsman or personnel of the Office to defend against such complaint; or (iv)  
141 communications are sought or offered to prove or disprove a claim or complaint of misconduct or  
142 malpractice filed against the legal representative of a person who received assistance from the Appeals  
143 Ombudsman or personnel of the Office. Confidential materials and communications as described in this  
144 section are not subject to mandatory disclosure under the Virginia Freedom of Information Act (§ 2.2-  
145 3700 et seq.).

146 D. The Appeals Ombudsman and personnel of the Office shall be immune from civil liability in  
147 their performance of the duties specified in this section.

148 **§ 60.2-619. (Effective until July 1, 2022) Determinations and decisions by deputy; appeals**  
149 **therefrom.**

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

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

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

157 2. When the payment or denial of benefits will be determined by the provisions of subdivision 2  
158 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision  
159 to any appeal tribunal, which shall make its determination in accordance with the procedure described in  
160 § 60.2-620.

161 B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory  
162 notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant  
163 and all subsequent employing units, and any reimbursable employing units that may be liable for  
164 reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall  
165 not have any effect upon the claim for benefits. If a claimant has had a determination of initial eligibility  
166 for benefits under this chapter, as evidenced by the issuance of compensation or waiting-week credit,  
167 payments shall continue, subject to a presumption of continued eligibility and in accordance with the terms  
168 of this subsection, until a determination is made that provides the claimant notice and an opportunity to  
169 be heard. When a question concerning continued eligibility for benefits arises, a determination shall be  
170 made as to whether it affects future weeks of benefits or only past weeks. With respect to future weeks,  
171 presumptive payment shall not be made until but no later than the end of the week following the week in  
172 which such issue arises, regardless of the type of issue. With respect to past weeks, presumptive payment  
173 shall be issued immediately, regardless of the type of issue. Notice shall be given to individuals who  
174 receive payments under such presumption that pending eligibility may affect their entitlement to the  
175 payment and may result in an overpayment that requires repayment.

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

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

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

212 **§ 60.2-619. (Effective July 1, 2022) Determinations and decisions by deputy; appeals**  
213 **therefrom.**



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

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

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

221 2. When the payment or denial of benefits will be determined by the provisions of subdivision 2  
222 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision  
223 to any appeal tribunal, which shall make its determination in accordance with the procedure described in  
224 § 60.2-620.

225 B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory  
226 notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant  
227 and all subsequent employing units, and any reimbursable employing units which may be liable for  
228 reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall  
229 not have any effect upon the claim for benefits.

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

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

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

266 **2. That the Virginia Department of Human Resource Management shall lead a multiagency work**  
267 **group, composed of agency leaders and human resources staff from state agencies most likely to be**

268 in need of staffing assistance during emergencies, to examine the feasibility of, funding for, and  
269 policies and procedures necessary for (i) granting agencies exemptions from certain competitive  
270 hiring requirements during emergencies; (ii) requiring selected state agency staff to temporarily  
271 support other agencies in need of staffing assistance during emergencies through existing or new  
272 state initiatives; and (iii) providing necessary funding to cover the associated costs. The work group  
273 shall propose criteria to determine under what circumstances these emergency hiring practices may  
274 be invoked and a process for invoking this authority as well as terminating it. The work group shall  
275 submit its findings to the Secretary of Administration and the Chairmen of the House Committee  
276 on Appropriations and the Senate Committee on Finance and Appropriations by December 1, 2022.  
277 3. That the Virginia Employment Commission (the Commission) shall, by December 1, 2022, direct  
278 staff in its internal audit division to review and revise documents and online resources to clearly  
279 describe and explain to claimants and employers requirements for unemployment compensation.  
280 In its review and revision, the internal audit division shall describe and explain (i) eligibility criteria  
281 for unemployment insurance, (ii) how to navigate the unemployment insurance claims and appeals  
282 process, and (iii) how to determine the status or outcome of a claim. The Commission shall consider  
283 examples from other states, collect input from Commission staff and unemployment compensation  
284 recipients, and competitively procure a third-party contractor with expertise in unemployment  
285 insurance and customer communications to help with efforts in reviewing and revising its  
286 documents and online resources.

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