

HOUSE BILL NO. 652

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate Wampler)

A BILL to amend and reenact §§ 60.2-110, 60.2-116, 60.2-612, 60.2-613, 60.2-619, as it is currently effective and as it shall become effective, and 60.2-631 of the Code of Virginia, relating to unemployment compensation; notice of hearing prior to discontinuing benefits; overpayment forgiveness; benefit eligibility; emergency.

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-110, 60.2-116, 60.2-612, 60.2-613, 60.2-619, as it is currently effective and as it shall become effective, and 60.2-631 of the Code of Virginia are amended and reenacted as follows:

§ 60.2-110. State Job Service and Unemployment Insurance Services Division.

The Commission may establish two coordinate divisions: the Virginia State Job Service, created pursuant to § 60.2-400, and the Unemployment Insurance Services Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit, with respect to personnel, budget, and duties, except insofar as the Commission may find that such separation is impracticable. In lieu, however, of establishing the two divisions the Commission may cooperate with and utilize the personnel and services of employment offices or services operated by the United States or any of its authorized agencies but only to the extent necessary for the federal employment offices or services to perform the functions imposed upon employment offices by § 60.2-601 and subdivision A 5 of § 60.2-612.

§ 60.2-116. Reciprocal agreements.

A. Subject to the approval of the Governor, the Commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not

27 specifically provided for in §§ 60.2-212 through 60.2-219, or under similar provisions in the
28 unemployment compensation laws of such other states, shall be deemed to be engaged in employment
29 performed entirely within this Commonwealth or within one of such other states. Such arrangements may
30 set forth terms whereby the potential right to benefits accumulated under the unemployment compensation
31 laws of one or more states or under such a law of the federal government, or both, may constitute the basis
32 for the payment of benefits through a single appropriate agency of any state under terms which the
33 Commission finds will be fair and reasonable as to all affected interests and will not result in any
34 substantial loss to the fund.

35 B. Subject to the approval of the Governor, the Commission is also authorized to enter into
36 arrangements with the appropriate agencies of other states or of the federal government:

37 1. a. Whereby wages or services, upon the basis of which an individual may become entitled to
38 benefits under the unemployment compensation law of another state or of the federal government, shall
39 be deemed to be wages for employment by employers for the purposes of §§ 60.2-602, 60.2-606, 60.2-
40 607, 60.2-609, 60.2-610, 60.2-611, subdivision A 1 of § 60.2-612 and §§ 60.2-614 through 60.2-617,
41 provided such other state agency or agency of the federal government has agreed to reimburse the fund
42 for such portion of benefits paid under this title upon the basis of such wages or services as the Commission
43 finds will be fair and reasonable as to all affected interests; and

44 b. Whereby the Commission will reimburse other state or federal agencies charged with the
45 administration of unemployment compensation laws with such reasonable portion of benefits, paid under
46 the law of any such other states or of the federal government upon the basis of employment or wages for
47 employment by employers, as the Commission finds will be fair and reasonable as to all affected interests.

48 2. Reimbursements so payable under subdivision 1 b of this subsection shall be deemed to be
49 benefits for the purposes of §§ 60.2-300 through 60.2-304, but no reimbursement so payable shall be
50 charged against any employer's account for the purposes of §§ 60.2-526 through 60.2-531. The
51 Commission is hereby authorized to make to other state or federal agencies and receive from such other
52 state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant
53 to this section.

54 C. Subject to the approval of the Governor, the Commission is also authorized to enter into
55 arrangements with the appropriate agencies of other states or of the federal government:

56 1. Whereby the Commission may deduct, in accordance with the provisions of § 60.2-633, from
57 unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to
58 such individual under an unemployment benefit program of the United States or of any other state, and
59 not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program
60 such overpayment was made and in accordance with the arrangement between the Commission and the
61 jurisdiction.

62 2. Whereby the United States agrees to allow the Commission to recover from unemployment
63 benefits otherwise payable to an individual under an unemployment benefit program of the United States
64 any overpayments made by the Commission to such individual under this title and not previously
65 recovered, in accordance with the same procedures that apply under subdivision 1 of this subsection.

66 3. The amendments made by this subsection shall apply to recoveries made on or after July 1,
67 1987, and shall apply with respect to overpayments made before, on, or after such date.

68 **§ 60.2-612. Benefit eligibility conditions.**

69 A. An unemployed individual shall be eligible to receive benefits for any week only if the
70 Commission finds that:

71 1. He has, in the highest two quarters of earnings within his base period, been paid wages in
72 employment for employers that are equal to not less than the lowest amount appearing in Column A of
73 the "Benefit Table" appearing in § 60.2-602 on the line which extends through Division C and on which
74 in Column B of the "Benefit Table" appears his weekly benefit amount. Such wages shall be earned in not
75 less than two quarters.

76 2. a. His total or partial unemployment is not due to a labor dispute in active progress or to
77 shutdown or start-up operations caused by such dispute which exists (i) at the factory, establishment, or
78 other premises, including a vessel, at which he is or was last employed, or (ii) at a factory, establishment
79 or other premises, including a vessel, either within or without this Commonwealth, which (a) is owned or
80 operated by the same employing unit which owns or operates the premises at which he is or was last

81 employed and (b) supplies materials or services necessary to the continued and usual operation of the
82 premises at which he is or was last employed. This subdivision shall not apply if it is shown to the
83 satisfaction of the Commission that:

84 (1) He is not participating in or financing or directly interested in the labor dispute; and

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

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

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

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

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

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

107 7. a. He is able to work, is available for work, and is actively seeking and unable to obtain suitable
108 work. Every claimant who is totally unemployed shall report to the Commission the names of employers
109 contacted each week in his effort to obtain work. This information may be subject to employer verification
110 by the Commission through a program designed for that purpose. The Commission may determine that
111 registration by a claimant with the Virginia State Job Service may constitute a valid employer contact and
112 satisfy the search for work requirement of this subsection in labor market areas where job opportunities
113 are limited. The Commission may determine that an individual, whose usual and customary means of
114 soliciting work in his occupation is through contact with a single hiring hall which makes contacts with
115 multiple employers on behalf of the claimant, meets the requirement that he be actively seeking and unable
116 to obtain suitable work by contacting that hiring hall alone. In areas of high unemployment, as determined
117 by the Commission, the Commission has the authority to adjust the requirement that he be actively seeking
118 and unable to obtain suitable work.

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

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

130 8. He has given notice of resignation to his employer and the employer subsequently made the
131 termination of employment effective prior to the date of termination as given in the notice, but in no case
132 shall unemployment compensation benefits awarded under this subdivision exceed two weeks; provided,

133 that the claimant could not establish good cause for leaving work pursuant to § 60.2-618 and was not
134 discharged for misconduct as provided in § 60.2-618.

135 9. Beginning January 6, 1991, he has served a waiting period of one week during which he was
136 eligible for benefits under this section in all other respects and has not received benefits, except that only
137 one waiting week shall be required of such individual within any benefit year. For claims filed effective
138 November 28, 1999, and after, this requirement shall be waived for any individual whose unemployment
139 was caused by his employer terminating operations, closing its business or declaring bankruptcy without
140 paying the final wages earned as required by § 40.1-29 of the Code of Virginia. Notwithstanding any other
141 provision of this title, if an employer who terminates operations, closes its business or declares bankruptcy
142 pays an individual his final wages after the period of time prescribed by § 40.1-29 of the Code of Virginia,
143 such payment shall not be offset against the benefits the individual was otherwise entitled to receive and
144 shall not, under any circumstances, cause such individual to be declared overpaid benefits.

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

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

151 B. Prior to any individual's receiving benefits under this chapter, the Commission shall conduct an
152 incarceration check and an employment identification check to verify the status of the unemployed
153 individual seeking a claim for benefits.

154 **§ 60.2-613. Benefits not denied to individuals in training with approval of Commission.**

155 A. No otherwise eligible individual shall be denied benefits for any week because he is in training
156 with the approval of the Commission, including training under Section 134 of the Workforce Investment
157 Act, nor shall such individual be denied benefits for any week in which he is in training with the approval
158 of the Commission, including training under Section 134 of the Workforce Investment Act, by reason of
159 the application of the provisions in subdivision A 7 of § 60.2-612 relating to availability for work, or the

160 provisions of subdivision 3 of § 60.2-618 relating to failure to apply for, or a refusal to accept, suitable
161 work.

162 B. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be
163 denied benefits for any week because he is in training approved under § 2296 of the Trade Act (19 U.S.C.
164 § 2101 et seq.), nor shall such individual be denied benefits by reason of leaving work to enter such
165 training, provided the work left is not suitable employment, or because of the application to any such week
166 in training of provisions in this law (or any applicable federal unemployment compensation law), relating
167 to availability for work, active search for work, or refusal to accept work.

168 C. For purposes of this section, "suitable employment" means, with respect to an individual, work
169 of a substantially equal or higher skill level than the individual's past adversely affected employment, as
170 defined for purposes of the Trade Act, and wages for such work at not less than eighty percent of the
171 individual's average weekly wage as determined for the purposes of the Trade Act.

172 **§ 60.2-619. (Effective until July 1, 2022) Determinations and decisions by deputy; appeals**
173 **therefrom.**

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

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

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

181 2. When the payment or denial of benefits will be determined by the provisions of subdivision A
182 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision
183 to any appeal tribunal, which shall make its determination in accordance with the procedure described in
184 § 60.2-620.

185 B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory
186 notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant

187 and all subsequent employing units, and any reimbursable employing units that may be liable for
188 reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall
189 not have any effect upon the claim for benefits. If a claimant has had a determination of initial eligibility
190 for benefits under this chapter, as evidenced by the issuance of compensation or waiting-week credit,
191 payments shall continue, subject to a presumption of continued eligibility and in accordance with the terms
192 of this subsection, until a determination is made that provides the claimant notice and an opportunity to
193 be heard. When a question concerning continued eligibility for benefits arises, a determination shall be
194 made as to whether it affects future weeks of benefits or only past weeks. With respect to future weeks,
195 presumptive payment shall not be made until but no later than the end of the week following the week in
196 which such issue arises, regardless of the type of issue. With respect to past weeks, presumptive payment
197 shall be issued immediately, regardless of the type of issue. Notice shall be given to individuals who
198 receive payments under such presumption that pending eligibility may affect their entitlement to the
199 payment and may result in an overpayment that requires repayment.

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

211 D. Such determination or decision shall be final unless the claimant or any such employing unit
212 files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such
213 notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or

214 (iii) within 30 days after such notification was mailed to the last known address of an interstate claimant.
215 For good cause shown, the 30-day period may be extended.

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

230 **§ 60.2-619. (Effective July 1, 2022) Determinations and decisions by deputy; appeals**
231 **therefrom.**

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

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

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

239 2. When the payment or denial of benefits will be determined by the provisions of subdivision A
240 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision

241 to any appeal tribunal, which shall make its determination in accordance with the procedure described in
242 § 60.2-620.

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

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

259 D. Such determination or decision shall be final unless the claimant or any such employing unit
260 files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such
261 notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or
262 (iii) within 30 days after such notification was mailed to the last known address of an interstate claimant.
263 For good cause shown, the 30-day period may be extended.

264 E. Benefits shall be paid promptly in accordance with a determination or redetermination under
265 this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court
266 under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision,
267 regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in

268 this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such
269 determination, redetermination or decision has been modified or reversed by a subsequent redetermination
270 or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in
271 accordance with such modifying or reversing redetermination or decision. If a decision of an appeal
272 tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid
273 until such time as a court decision has become final so that no further appeal can be taken. If an appeal is
274 taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the
275 employer under § 60.2-530 only when, and as of the date on which, as the result of an appeal, the courts
276 finally determine that the Commission should have awarded benefits to the claimant or claimants involved
277 in such appeal.

278 **§ 60.2-631. Board of Review.**

279 A. The Commissioner, in his discretion, is hereby authorized to appoint a Board of Review
280 consisting of three members, one of whom shall be designated chairman for a term of six years. The terms
281 of the members first taking office shall be two, four, and six years, respectively, as designated by the
282 Commissioner at the time of the appointment. Vacancies shall be filled by appointment by the
283 Commissioner for the unexpired term. During his term of membership on the Board no member shall
284 serve as an officer or committee member of any political organization. The members of the Board shall
285 be compensated in a manner determined by the Commission. The Commission shall furnish the Board
286 such stenographic and clerical assistance as the Board may require. All compensation of the members of
287 the Board and all necessary expenses for the operation thereof shall be paid out of the administrative fund
288 provided for in §§ 60.2-306 through 60.2-309 and §§ 60.2-311 through 60.2-313. The Commissioner may
289 at any time, after notice and hearing, remove any member for cause. The Commissioner may, after thirty
290 days' notice to the members of the Board and upon a finding that the Board is no longer needed, abolish
291 the same.

292 B. 1. The Board shall meet upon the call of the chairman. It shall have the same powers and perform
293 the same functions vested in the Commission in this title for review of decisions by an appeal tribunal,
294 including the power to administer oaths and affirmations, take depositions, certify to official acts, and

295 issue subpoenas to compel the attendance of witnesses and the production of books, papers,
296 correspondence, memoranda and other records deemed necessary as evidence in connection with disputed
297 claims.

298 2. The Board may hold its hearings in the county or city where the claimant was last employed,
299 except that hearings involving the provisions of subdivision A 2 of § 60.2-612 shall be held in the county
300 or city where the claimant was last employed. When the same or substantially similar evidence is relevant
301 and material to matters in issue in claims by more than one individual or in claims by a single individual
302 with respect to two or more weeks of unemployment, the same time and place for considering each such
303 claim may be fixed, hearings thereon jointly conducted, and a single record of the proceedings made.

304 C. The Commission may issue such regulations as it deems necessary for the procedure of the
305 Board in the conduct of its hearings. During the time the Board is organized under authority of the
306 Commissioner, the Commission shall have no jurisdiction under § 60.2-622. Any decision of the Board
307 shall become final ten days after the date of notification or mailing and judicial review shall be permitted
308 the claimant, the Commission or any interested party claiming to be aggrieved. In any judicial action
309 involving any such decision the Commission shall be represented by the Office of the Attorney General.
310 Any decision of the Board from which no judicial review is sought within the time prescribed in § 60.2-
311 625 shall be conclusive against any party to the hearing before the Board and the Commission in any
312 subsequent judicial proceedings involving liability for taxes under this title.

313 D. Within the time specified in § 60.2-625 the Commission, or any party to the proceedings before
314 the Board, may obtain judicial review by filing in the circuit court of the county or city in which the
315 individual who filed the claim was last employed, in the Commonwealth, a petition for review of such
316 decision. In any such proceeding any other party to the proceeding shall be made a party respondent. The
317 Commission shall be deemed to be a party to any such proceeding. The petition need not be verified. A
318 copy of such petition shall be served upon the Commission and each party to the proceeding held before
319 the Board at least thirty days prior to the placing of the petition upon the docket. The mailing of a copy of
320 such petition to each party at his last known address shall be sufficient service. The Commission shall file
321 along with its petition or answer a certified copy of the record of the case, including all documents and

322 papers and a transcript of all testimony taken in the matter, together with the Board's findings, conclusions
323 and decision therein.

324 E. In any proceeding under this section the Board's findings of facts, if supported by the evidence
325 and in the absence of fraud, shall be conclusive and the jurisdiction of the court shall be confined to
326 questions of law. The court may order additional evidence to be taken by the Board, which such additional
327 evidence, findings of fact or conclusions, together with the additional transcript of the record, shall be
328 certified by the chairman of the Board and filed by him with the court. Such petition for review shall be
329 heard in a summary manner and shall have preference over all other cases on the docket, except cases in
330 which the Commonwealth is a party.

331 F. An appeal may be taken from the decision of such court to the Court of Appeals in conformity
332 with Part Five A of the Rules of Supreme Court and other applicable laws. From any such decision
333 involving (i) the provisions of § 60.2-612 or § 60.2-618, (ii) whether an employing unit constitutes an
334 employer or (iii) whether services performed for or in connection with the business of an employing unit
335 constitute employment for such employing unit, the Court of Appeals shall have jurisdiction to review
336 such decision regardless of the amount involved in any claim for benefits. It shall not be necessary, in any
337 proceeding before the Board, to enter exceptions to its ruling, and no bond shall be required upon any
338 appeal to any court. Upon the final determination of such judicial proceeding, the Board shall enter an
339 order in accordance with such determination.

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