

1 **H. B. 2344**

2
3 (By Delegates Caputo and Longstreth)

4 [Introduced January 12, 2011; referred to the
5 Committee on the Judiciary then Finance.]

6 **FISCAL**
7 **NOTE**

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9
10 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia,
11 1931, as amended, relating to removing the receipt of an
12 annuity, pension or other retirement pay as a disqualification
13 for unemployment compensation benefits.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §21A-6-3 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

18 **§21A-6-3. Disqualification for benefits.**

19 Upon the determination of the facts by the commissioner, an
20 individual ~~shall be~~ is disqualified for benefits:

21 (1) For the week in which he or she left his or her most
22 recent work voluntarily without good cause involving fault on the
23 part of the employer and until the individual returns to covered

1 employment and has been employed in covered employment at least
2 thirty working days.

3 For the purpose of this subdivision, an individual ~~shall~~ has
4 ~~not be deemed to have~~ left his or her most recent work voluntarily
5 without good cause involving fault on the part of the employer, if
6 ~~such~~ the individual leaves his or her most recent work with an
7 employer and if he or she in fact, within a fourteen-day calendar
8 period, does return to employment with the last preceding employer
9 with whom he or she was previously employed within the past year
10 prior to his or her return to workday, and which last preceding
11 employer, after having previously employed ~~such~~ the individual for
12 thirty working days or more, laid off ~~such~~ the individual because
13 of lack of work, which layoff occasioned the payment of benefits
14 under this chapter or could have occasioned the payment of benefits
15 under this chapter had ~~such~~ the individual applied for such
16 benefits. It is the intent of this paragraph to cause no
17 disqualification for benefits for ~~such~~ an individual who complies
18 with the foregoing set of requirements and conditions. Further,
19 for the purpose of this subdivision, an individual ~~shall~~ has not ~~be~~
20 ~~deemed to have~~ left his or her most recent work voluntarily without
21 good cause involving fault on the part of the employer, if ~~such~~ the
22 individual was compelled to leave his or her work for his or her
23 own health-related reasons and notifies the employer prior to
24 leaving the job or within two business days after leaving the job
25 or as soon as practicable and presents written certification from

1 a licensed physician within thirty days of leaving the job that his
2 or her work aggravated, worsened or will worsen the individual's
3 health problem.

4 (2) For the week in which he or she was discharged from his or
5 her most recent work for misconduct and the six weeks immediately
6 following such week; or for the week in which he or she was
7 discharged from his or her last thirty-day employing unit for
8 misconduct and the six weeks immediately following ~~such~~ that week.
9 ~~Such~~ The disqualification ~~shall carry~~ carries a reduction in the
10 maximum benefit amount equal to six times the individual's weekly
11 benefit. However, if the claimant returns to work in covered
12 employment for thirty days during his or her benefit year, whether
13 or not ~~such~~ the days are consecutive, the maximum benefit amount
14 shall be increased by the amount of the decrease imposed under the
15 disqualification; except that:

16 If he or she were discharged from his or her most recent work
17 for one of the following reasons, or if he or she were discharged
18 from his or her last ~~thirty days~~ thirty-day employing unit for one
19 of the following reasons: Gross misconduct consisting of willful
20 destruction of his or her employer's property; assault upon the
21 person of his or her employer or any employee of his or her
22 employer if ~~such~~ the assault is committed at ~~such~~ the individual's
23 place of employment or in the course of employment; reporting to
24 work in an intoxicated condition or being intoxicated while at
25 work; reporting to work under the influence of any controlled

1 substance, as defined in chapter sixty-a of this code, without a
2 valid prescription or being under the influence of any controlled
3 substance, as defined in ~~said~~ that chapter, without a valid
4 prescription while at work; adulterating or otherwise manipulating
5 a sample or specimen in order to thwart a drug or alcohol test
6 lawfully required of an employee; refusal to submit to random
7 testing for alcohol or illegal controlled substances for employees
8 in safety sensitive positions as defined in section two, article
9 one-d, chapter twenty-one of this code; arson, theft, larceny,
10 fraud or embezzlement in connection with his or her work; or any
11 other gross misconduct, he or she shall be and remain disqualified
12 for benefits until he or she has thereafter worked for at least
13 thirty days in covered employment. ~~Provided, That~~ For the purpose
14 of this subdivision, the words "any other gross misconduct" ~~shall~~
15 ~~include~~ includes, but is not ~~be~~ limited to, any act or acts of
16 misconduct where the individual has received prior written warning
17 that termination of employment may result from such act or acts.

18 (3) For the week in which he or she failed without good cause
19 to apply for available, suitable work, accept suitable work when
20 offered, or return to his or her customary self-employment when
21 directed to do so by the commissioner, and for the four weeks which
22 immediately follow ~~for such~~ the additional period ~~as~~ that any offer
23 of suitable work ~~shall continue~~ continues open for his or her
24 acceptance. ~~Such~~ The disqualification ~~shall carry~~ carries a
25 reduction in the maximum benefit amount equal to four times the

1 individual's weekly benefit amount.

2 (4) For a week in which his or her total or partial
3 unemployment is due to a stoppage of work which exists because of
4 a labor dispute at the factory, establishment or other premises at
5 which he or she was last employed, unless the commissioner is
6 satisfied that he or she: (1) Was not participating, financing or
7 directly interested in ~~such~~ the dispute; and (2) did not belong to
8 a grade or class of workers who were participating, financing or
9 directly interested in the labor dispute which resulted in the
10 stoppage of work. ~~No~~ A disqualification under this subdivision
11 ~~shall~~ may not be imposed if the employees are required to accept
12 wages, hours or conditions of employment substantially less
13 favorable than those prevailing for similar work in the locality,
14 ~~or~~ if employees are denied the right of collective bargaining under
15 generally prevailing conditions, or if an employer shuts down his
16 or her plant or operation or dismisses his or her employees in
17 order to force wage reduction, changes in hours or working
18 conditions. For the purpose of this subdivision if ~~any~~ a stoppage
19 of work continues longer than four weeks after the termination of
20 the labor dispute which caused stoppage of work, there ~~shall be~~ is
21 a rebuttable presumption that part of the stoppage of work which
22 exists after a period of four weeks after the termination of the
23 labor dispute did not exist because of the labor dispute and, in
24 that event, the burden ~~shall be~~ is upon the employer or other
25 interested party to show otherwise.

1 (5) For a week with respect to which he or she is receiving or
2 has received:

3 (a) Wages in lieu of notice;

4 (b) Compensation for temporary total disability under the
5 workers' compensation law of any state or under a similar law of
6 the United States; or

7 (c) Unemployment compensation benefits under the laws of the
8 United States or any other state.

9 (6) For the week in which an individual has voluntarily quit
10 employment to marry or to perform any marital, parental or family
11 duty, or to attend to his or her personal business or affairs and
12 until the individual returns to covered employment and has been
13 employed in covered employment at least thirty working days.

14 (7) Benefits ~~shall~~ may not be paid to ~~any~~ an individual on the
15 basis of any services, substantially all of which consist of
16 participating in sports or athletic events or training or preparing
17 to so participate, for any week which commences during the period
18 between two successive sport seasons (or similar periods) if ~~such~~
19 the individual performed ~~such~~ the services in the first of ~~such~~ the
20 seasons (or similar periods) and there is a reasonable assurance
21 that ~~such~~ the individual will perform ~~such~~ the services in the
22 later of ~~such~~ the seasons (or similar periods).

23 (8) (a) Benefits ~~shall~~ may not be paid on the basis of services
24 performed by an alien unless ~~such~~ the alien is an individual who
25 was lawfully admitted for permanent residence at the time ~~such~~ the

1 services were performed, was lawfully present for purposes of
2 performing ~~such~~ the services or was permanently residing in the
3 United States under color of law at the time ~~such~~ the services were
4 performed (including an alien who is lawfully present in the United
5 States as a result of the application of the provisions of Section
6 203(a) (7) or Section 212(d) (5) of the Immigration and Nationality
7 Act): *Provided*, That ~~any~~ modifications to the provisions of
8 Section 3304(a) (14) of the federal Unemployment Tax Act as provided
9 by Public Law 94-566 which specify other conditions or other
10 effective date than stated herein for the denial of benefits based
11 on services performed by aliens and which modifications are
12 required to be implemented under state law as a condition for full
13 tax credit against the tax imposed by the federal Unemployment Tax
14 Act ~~shall be deemed~~ are applicable under the provisions of this
15 section;

16 (b) Any data or information required of individuals applying
17 for benefits to determine whether benefits are not payable to them
18 because of their alien status shall be uniformly required from all
19 applicants for benefits;

20 (c) In the case of an individual whose application for
21 benefits would otherwise be approved, no determination that
22 benefits to ~~such~~ the individual are not payable because of his or
23 her alien status ~~shall~~ may be made except upon a preponderance of
24 the evidence.

25 (9) For each week in which an individual is unemployed

1 because, having voluntarily left employment to attend a school,
2 college, university or other educational institution, he or she is
3 attending ~~such~~ the school, college, university or other educational
4 institution, or is awaiting entrance thereto or is awaiting the
5 starting of a new term or session thereof, and until the individual
6 returns to covered employment.

7 (10) For each week in which he or she is unemployed because of
8 his or her request, or that of his or her duly authorized agent,
9 for a vacation period at a specified time that would leave the
10 employer no other alternative but to suspend operations.

11 (11) In the case of an individual who accepts an early
12 retirement incentive package, unless he or she: (i) Establishes a
13 well-grounded fear of imminent layoff supported by definitive
14 objective facts involving fault on the part of the employer; and
15 (ii) establishes that he or she would suffer a substantial loss by
16 not accepting the early retirement incentive package.

17 ~~(12) For each week with respect to which he or she is~~
18 ~~receiving or has received benefits under Title II of the Social~~
19 ~~Security Act or similar payments under any act of Congress, or~~
20 ~~remuneration in the form of an annuity, pension or other retirement~~
21 ~~pay from a base period employer or chargeable employer or from any~~
22 ~~trust or fund contributed to by a base period employer or~~
23 ~~chargeable employer or any combination of the above, the weekly~~
24 ~~benefit amount payable to such individual for such week shall be~~
25 ~~reduced (but not below zero) by the prorated weekly amount of said~~

1 ~~benefits, payments or remuneration: *Provided*, That if such amount~~
2 ~~of benefits is not a multiple of \$1, it shall be computed to the~~
3 ~~next lowest multiple of \$1: *Provided*, however, That there shall be~~
4 ~~no disqualification if in the individual's base period there are no~~
5 ~~wages which were paid by the base period employer or chargeable~~
6 ~~employer paying such remuneration, or by a fund into which the~~
7 ~~employer has paid during said base period: *Provided further*, That~~
8 ~~notwithstanding any other provision of this subdivision to the~~
9 ~~contrary, the weekly benefit amount payable to such individual for~~
10 ~~such week shall not be reduced by any retirement benefits he or she~~
11 ~~is receiving or has received under Title II of the Social Security~~
12 ~~Act or similar payments under any act of Congress. Claimant may be~~
13 ~~required to certify as to whether or not he or she is receiving or~~
14 ~~has been receiving remuneration in the form of an annuity, pension~~
15 ~~or other retirement pay from a base period employer or chargeable~~
16 ~~employer or from a trust fund contributed to by a base period~~
17 ~~employer or chargeable employer.~~

18 ~~(13)~~ (12) For each week in which and for fifty-two weeks
19 thereafter, beginning with the date of the decision, if the
20 commissioner finds ~~such~~ the individual who within twenty-four
21 calendar months immediately preceding ~~such~~ the decision, has made
22 a false statement or representation knowing it to be false or
23 knowingly fails to disclose a material fact, to obtain or increase
24 any benefit or payment under this article. ~~*Provided*, That A~~
25 disqualification under this subdivision ~~shall~~ does not preclude

1 prosecution under section seven, article ten of this chapter.

NOTE: The purpose of this bill is to remove the receipt of an annuity, pension or other retirement pay as a disqualification for unemployment compensation benefits.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.