

**Senate Bill No. 185**

(By Senators Wells, Williams, Yost, Sypolt, Unger, Plymale, Hall,  
Laird, Minard and Klempa)

[Introduced January 18, 2011; referred to the Committee on  
Military; and then to the Committee on Finance.]

**Interim  
Bill**

A BILL to amend and reenact §21A-6-3 of the Code of West Virginia,  
1931, as amended, relating to unemployment benefits for  
certain spouses of military personnel; providing that an  
individual who has voluntarily quit employment to accompany a  
spouse serving in active military service who has been  
reassigned from one military assignment to another shall not  
be disqualified for benefits; and providing that the account  
of the employer of the individual who leaves employment to  
accompany a spouse reassigned from one military assignment to  
another shall not be charged.

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

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

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

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

Upon the determination of the facts by the commissioner, an

1 individual shall be disqualified for benefits:

2       (1) For the week in which he or she left his or her most  
3 recent work voluntarily without good cause involving fault on the  
4 part of the employer and until the individual returns to covered  
5 employment and has been employed in covered employment at least  
6 thirty working days.

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

1 work for his or her own health-related reasons and notifies the  
2 employer prior to leaving the job or within two business days after  
3 leaving the job or as soon as practicable and presents written  
4 certification from a licensed physician within thirty days of  
5 leaving the job that his or her work aggravated, worsened or will  
6 worsen the individual's health problem.

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

19       If he or she were discharged from his or her most recent work  
20 for one of the following reasons, or if he or she were discharged  
21 from his or her last thirty days employing unit for one of the  
22 following reasons:     Gross misconduct consisting of willful  
23 destruction of his or her employer's property; assault upon the  
24 person of his or her employer or any employee of his or her  
25 employer; if such assault is committed at such individual's place

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

21       (3) For the week in which he or she failed without good cause  
22 to apply for available, suitable work, accept suitable work when  
23 offered, or return to his or her customary self-employment when  
24 directed to do so by the commissioner, and for the four weeks which  
25 immediately follow for such additional period as any offer of

1 suitable work shall continue open for his or her acceptance. Such  
2 disqualification shall carry a reduction in the maximum benefit  
3 amount equal to four times the individual's weekly benefit amount.

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

1 burden shall be upon the employer or other interested party to show  
2 otherwise.

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

5 (a) Wages in lieu of notice;

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

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

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

16 Provided, That an individual who has voluntarily quit employment to  
17 accompany a spouse serving in active military service who has been  
18 reassigned from one military assignment to another shall not be  
19 disqualified for benefits pursuant to this subdivision: *Provided,*  
20 however, That the account of the employer of an individual who  
21 leaves the employment to accompany a spouse reassigned from one  
22 military assignment to another shall not be charged.

23 (7) Benefits shall not be paid to any individual on the basis  
24 of any services, substantially all of which consist of  
25 participating in sports or athletic events or training or preparing

1 to so participate, for any week which commences during the period  
2 between two successive sport seasons (or similar periods) if such  
3 individual performed such services in the first of such seasons (or  
4 similar periods) and there is a reasonable assurance that such  
5 individual will perform such services in the later of such seasons  
6 (or similar periods).

7 (8) (a) Benefits shall not be paid on the basis of services  
8 performed by an alien unless such alien is an individual who was  
9 lawfully admitted for permanent residence at the time such services  
10 were performed, was lawfully present for purposes of performing  
11 such services or was permanently residing in the United States  
12 under color of law at the time such services were performed  
13 (including an alien who is lawfully present in the United States as  
14 a result of the application of the provisions of Section 203(a) (7)  
15 or Section 212(d) (5) of the Immigration and Nationality Act):  
16 *Provided*, That any modifications to the provisions of Section  
17 3304(a) (14) of the federal Unemployment Tax Act as provided by  
18 Public Law 94-566 which specify other conditions or other effective  
19 date than stated herein for the denial of benefits based on  
20 services performed by aliens and which modifications are required  
21 to be implemented under state law as a condition for full tax  
22 credit against the tax imposed by the federal Unemployment Tax Act  
23 shall be deemed applicable under the provisions of this section;

24 (b) Any data or information required of individuals applying  
25 for benefits to determine whether benefits are not payable to them0

1 because of their alien status shall be uniformly required from all  
2 applicants for benefits;

3 (c) In the case of an individual whose application for  
4 benefits would otherwise be approved, no determination that  
5 benefits to such individual are not payable because of his or her  
6 alien status shall be made except upon a preponderance of the  
7 evidence.

8 (9) For each week in which an individual is unemployed  
9 because, having voluntarily left employment to attend a school,  
10 college, university or other educational institution, he or she is  
11 attending such school, college, university or other educational  
12 institution, or is awaiting entrance thereto or is awaiting the  
13 starting of a new term or session thereof, and until the individual  
14 returns to covered employment.

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

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

25 (12) For each week with respect to which he or she is



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

1           (13) For each week in which and for fifty-two weeks  
2 thereafter, beginning with the date of the decision, if the  
3 commissioner finds such individual who within twenty-four calendar  
4 months immediately preceding such decision, has made a false  
5 statement or representation knowing it to be false or knowingly  
6 fails to disclose a material fact, to obtain or increase any  
7 benefit or payment under this article: *Provided*, That  
8 disqualification under this subdivision shall not preclude  
9 prosecution under section seven, article ten of this chapter.

NOTE: The purpose of this bill is to provide that an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another shall not be disqualified for benefits. The bill also provides that the account of the employer of the individual shall not be charged.

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

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislative Committee.