

H. B. 4007

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[Introduced January 12, 2012; referred to the
Committee on Veterans' Affairs and Homeland Security then
Finance.]

A BILL to amend and reenact 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 is not 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 may not be charged for those benefits.

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.

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

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

8 For the purpose of this subdivision, an individual ~~shall~~
9 has not ~~be deemed to have~~ left his or her most recent work
10 voluntarily without good cause involving fault on the part of
11 the employer, if ~~such~~ the individual leaves his or her most
12 recent work with an employer and if he or she in fact, within
13 a fourteen-day calendar period, does return to employment

14 with the last preceding employer with whom he or she was
15 previously employed within the past year prior to his or her
16 return to workday, and which last preceding employer, after
17 having previously employed ~~such~~ the individual for thirty
18 working days or more, laid off ~~such~~ the individual because of
19 lack of work, which layoff occasioned the payment of
20 benefits under this chapter or could have occasioned the
21 payment of benefits under this chapter had ~~such~~ the
22 individual applied for ~~such~~ benefits. It is the intent of this
23 paragraph to cause no disqualification for benefits for ~~such~~
24 an individual who complies with the foregoing set of
25 requirements and conditions. Further, for the purpose of this
26 subdivision, an individual ~~shall~~ has not ~~be deemed to have~~
27 left his or her most recent work voluntarily without good
28 cause involving fault on the part of the employer, if ~~such~~ the
29 individual was compelled to leave his or her work for his or
30 her own health-related reasons and notifies the employer
31 prior to leaving the job or within two business days after

32 leaving the job or as soon as practicable and presents written
33 certification from a licensed physician within thirty days of
34 leaving the job that his or her work aggravated, worsened or
35 will worsen the individual's health problem.

36 (2) For the week in which he or she was discharged from
37 his or her most recent work for misconduct and the six weeks
38 immediately following ~~such~~ that week; or for the week in
39 which he or she was discharged from his or her last thirty-day
40 employing unit for misconduct and the six weeks
41 immediately following ~~such~~ that week. ~~Such~~ The
42 disqualification ~~shall carry~~ carries a reduction in the
43 maximum benefit amount equal to six times the individual's
44 weekly benefit. However, if the claimant returns to work in
45 covered employment for thirty days during his or her benefit
46 year, whether or not ~~such~~ the days are consecutive, the
47 maximum benefit amount ~~shall be~~ is increased by the amount
48 of the decrease imposed under the disqualification; except
49 that:

50 If he or she were discharged from his or her most recent
51 work for one of the following reasons, or if he or she were
52 discharged from his or her last thirty days employing unit for
53 one of the following reasons: Gross misconduct consisting
54 of willful destruction of his or her employer's property;
55 assault upon the person of his or her employer or any
56 employee of his or her employer; if ~~such~~ the assault is
57 committed at ~~such~~ the individual's place of employment or in
58 the course of employment; reporting to work in an
59 intoxicated condition, or being intoxicated while at work;
60 reporting to work under the influence of any controlled
61 substance, as defined in chapter sixty-a of this code without
62 a valid prescription, or being under the influence of any
63 controlled substance, as defined in said chapter without a
64 valid prescription, while at work; adulterating or otherwise
65 manipulating a sample or specimen in order to thwart a drug
66 or alcohol test lawfully required of an employee; refusal to
67 submit to random testing for alcohol or illegal controlled

68 substances for employees in safety sensitive positions as
69 defined in section two, article one-d, chapter twenty-one of
70 this code; arson, theft, larceny, fraud or embezzlement in
71 connection with his or her work; or any other gross
72 misconduct, he or she ~~shall be and remain~~ is disqualified for
73 benefits until he or she has thereafter worked for at least
74 thirty days in covered employment: *Provided*, That for the
75 purpose of this subdivision, the words "any other gross
76 misconduct" ~~shall include~~ includes, but is not ~~be~~ limited to,
77 any act or acts of misconduct where the individual has
78 received prior written warning that termination of
79 employment may result from ~~such~~ the act or acts.

80 (3) For the week in which he or she failed without good
81 cause to apply for available, suitable work, accept suitable work
82 when offered, or return to his or her customary self-employment
83 when directed to do so by the commissioner, and for the four
84 weeks which immediately follow for such additional period as
85 any offer of suitable work shall continue open for his or her

86 acceptance. ~~Such~~ The disqualification ~~shall carry~~ carries a
87 reduction in the maximum benefit amount equal to four times
88 the individual's weekly benefit amount.

89 (4) For a week in which his or her total or partial
90 unemployment is due to a stoppage of work which exists
91 because of a labor dispute at the factory, establishment or
92 other premises at which he or she was last employed, unless
93 the commissioner is satisfied that he or she: (1) Was not
94 participating, financing or directly interested in ~~such~~ the
95 dispute; and (2) did not belong to a grade or class of workers
96 who were participating, financing or directly interested in the
97 labor dispute which resulted in the stoppage of work. No
98 disqualification under this subdivision ~~shall be~~ is imposed if
99 the employees are required to accept wages, hours or
100 conditions of employment substantially less favorable than
101 those prevailing for similar work in the locality, or if
102 employees are denied the right of collective bargaining under
103 generally prevailing conditions, or if an employer shuts down

104 his or her plant or operation or dismisses his or her
105 employees in order to force wage reduction, changes in hours
106 or working conditions. For the purpose of this subdivision if
107 any stoppage of work continues longer than four weeks after
108 the termination of the labor dispute which caused stoppage
109 of work, there ~~shall be~~ is a rebuttable presumption that part
110 of the stoppage of work which exists after a period of four
111 weeks after the termination of the labor dispute did not exist
112 because of the labor dispute; and in that event the burden
113 ~~shall be~~ is upon the employer or other interested party to
114 show otherwise.

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

117 (a) Wages in lieu of notice;

118 (b) Compensation for temporary total disability under the
119 workers' compensation law of any state or under a similar
120 law of the United States; or

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

123 (6) For the week in which an individual has voluntarily
124 quit employment to marry or to perform any marital, parental
125 or family duty, or to attend to his or her personal business or
126 affairs and until the individual returns to covered
127 employment and has been employed in covered employment
128 at least thirty working days: Provided, That an individual
129 who has voluntarily quit employment to accompany a spouse
130 serving in active military service who has been reassigned
131 from one military assignment to another is not disqualified
132 for benefits pursuant to this subdivision: *Provided however,*
133 That the account of the employer of an individual who leaves
134 the employment to accompany a spouse reassigned from one
135 military assignment to another may not be charged.

136 (7) Benefits ~~shall~~ may not be paid to any individual on
137 the basis of any services, substantially all of which consist of
138 participating in sports or athletic events or training or

139 preparing to so participate, for any week which commences
140 during the period between two successive sport seasons (or
141 similar periods) if ~~such~~ the individual performed ~~such~~ the
142 services in the first of ~~such~~ the seasons (or similar periods)
143 and there is a reasonable assurance that ~~such~~ the individual
144 will perform ~~such~~ the services in the later of ~~such~~ the seasons
145 (or similar periods).

146 (8) (a) Benefits ~~shall~~ may not be paid on the basis of
147 services performed by an alien unless ~~such~~ the alien is an
148 individual who was lawfully admitted for permanent
149 residence at the time ~~such~~ the services were performed, was
150 lawfully present for purposes of performing ~~such~~ the services
151 or was permanently residing in the United States under color
152 of law at the time ~~such~~ the services were performed
153 (including an alien who is lawfully present in the United
154 States as a result of the application of the provisions of
155 Section 203(a)(7) or Section 212(d)(5) of the Immigration
156 and Nationality Act): *Provided*, That any modifications to
157 the provisions of Section 3304(a)(14) of the federal

158 Unemployment Tax Act as provided by Public Law 94-566
159 which specify other conditions or other effective date than
160 stated ~~herein~~ in this subdivision for the denial of benefits
161 based on services performed by aliens and which
162 modifications are required to be implemented under state law
163 as a condition for full tax credit against the tax imposed by
164 the federal Unemployment Tax Act ~~shall be deemed~~ are
165 applicable under the provisions of this section.

166 (b) Any data or information required of individuals
167 applying for benefits to determine whether benefits are not
168 payable to them because of their alien status shall be
169 uniformly required from all applicants for benefits.

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

175 (9) For each week in which an individual is unemployed
176 because, having voluntarily left employment to attend a

177 school, college, university or other educational institution, he
178 or she is attending ~~such~~ that school, college, university or
179 other educational institution, or is awaiting entrance thereto
180 or is awaiting the starting of a new term or session thereof,
181 and until the individual returns to covered employment.

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

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

194 (12) For each week with respect to which he or she is
195 receiving or has received benefits under Title II of the Social

196 Security Act or similar payments under any Act of Congress,
197 or remuneration in the form of an annuity, pension or other
198 retirement pay from a base period employer or chargeable
199 employer or from any trust or fund contributed to by a base
200 period employer or chargeable employer or any combination
201 of the above, the weekly benefit amount payable to ~~such~~ the
202 individual for ~~such that~~ week shall be reduced (but not below
203 zero) by the prorated weekly amount of ~~said those~~ benefits,
204 payments or remuneration: *Provided*, That if ~~such the~~
205 amount of benefits is not a multiple of \$1, it shall be
206 computed to the next lowest multiple of \$1: *Provided*,
207 *however*, That there ~~shall be~~ is no disqualification if in the
208 individual's base period there are no wages which were paid
209 by the base period employer or chargeable employer paying
210 ~~such the~~ remuneration, or by a fund into which the employer
211 has paid during ~~said the~~ base period: *Provided further*, That
212 notwithstanding any other provision of this subdivision to the
213 contrary, the weekly benefit amount payable to ~~such the~~
214 individual for ~~such that~~ week ~~shall~~ may not be reduced by

215 any retirement benefits he or she is receiving or has received
216 under Title II of the Social Security Act or similar payments
217 under any Act of Congress. A claimant may be required to
218 certify as to whether or not he or she is receiving or has been
219 receiving remuneration in the form of an annuity, pension or
220 other retirement pay from a base period employer or
221 chargeable employer or from a trust fund contributed to by a
222 base period employer or chargeable employer.

223 (13) For each week in which and for fifty-two weeks
224 thereafter, beginning with the date of the decision, if the
225 commissioner finds ~~such~~ the individual who within twenty-
226 four calendar months immediately preceding ~~such~~ the
227 decision, has made a false statement or representation
228 knowing it to be false or knowingly fails to disclose a
229 material fact, to obtain or increase any benefit or payment
230 under this article: *Provided*, That disqualification under this
231 subdivision ~~shall~~ does not preclude prosecution under section
232 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 is not disqualified for unemployment benefits. The bill also provides that the account of the employer of the individual may 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 2012 Regular Session of the Legislature by the Select Committee on Veterans' Affairs.