

1 **H. B. 2336**

2
3 (By Delegate Caputo)

4 [Introduced February 13, 2013; 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 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 has not
4 left his or her most recent work voluntarily without good cause
5 involving fault on the part of the employer, if the individual
6 leaves his or her most recent work with an employer and if he or
7 she in fact, within a fourteen-day calendar period, does return to
8 employment with the last preceding employer with whom he or she was
9 previously employed within the past year prior to his or her return
10 to workday, and which last preceding employer, after having
11 previously employed the individual for thirty working days or more,
12 laid off the individual because of lack of work, which layoff
13 occasioned the payment of benefits under this chapter or could have
14 occasioned the payment of benefits under this chapter had the
15 individual applied for benefits. It is the intent of this
16 paragraph to cause no disqualification for benefits for an
17 individual who complies with the foregoing set of requirements and
18 conditions. Further, for the purpose of this subdivision, an
19 individual has not left his or her most recent work voluntarily
20 without good cause involving fault on the part of the employer, if
21 the individual was compelled to leave his or her work for his or
22 her own health-related reasons and notifies the employer prior to
23 leaving the job or within two business days after leaving the job
24 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 that 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 that week. The
9 disqualification carries a reduction in the maximum benefit amount
10 equal to six times the individual's weekly benefit. However, if
11 the claimant returns to work in covered employment for thirty days
12 during his or her benefit year, whether or not the days are
13 consecutive, the maximum benefit amount is increased by the amount
14 of the decrease imposed under the disqualification; except that:

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

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

1 equal to four times the 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 the dispute; and (2) did not belong to a
8 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 disqualification under this subdivision is
11 imposed if the employees are required to accept wages, hours or
12 conditions of employment substantially less favorable than those
13 prevailing for similar work in the locality, or if employees are
14 denied the right of collective bargaining under generally
15 prevailing conditions, or if an employer shuts down his or her
16 plant or operation or dismisses his or her employees in order to
17 force wage reduction, changes in hours or working conditions. For
18 the purpose of this subdivision, if ~~any~~ a stoppage of work
19 continues longer than four weeks after the termination of the labor
20 dispute which caused stoppage of work, there is a rebuttable
21 presumption that part of the stoppage of work which exists after a
22 period of four weeks after the termination of the labor dispute did
23 not exist because of the labor dispute; and in that event the
24 burden is upon the employer or other interested party to show

1 otherwise.

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

4 (a) Wages in lieu of notice;

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

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

10 (6) For the week in which an individual has voluntarily quit
11 employment to marry or to perform any marital, parental or family
12 duty, or to attend to his or her personal business or affairs and
13 until the individual returns to covered employment and has been
14 employed in covered employment at least thirty working days:
15 *Provided*, That an individual who has voluntarily quit employment to
16 accompany a spouse serving in active military service who has been
17 reassigned from one military assignment to another is not
18 disqualified for benefits pursuant to this subdivision: *Provided*
19 *however*, That the account of the employer of an individual who
20 leaves the employment to accompany a spouse reassigned from one
21 military assignment to another may not be charged.

22 (7) Benefits may not be paid to ~~any~~ an individual on the basis
23 of any services, substantially all of which consist of
24 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 the
3 individual performed the services in the first of the seasons, or
4 similar periods, and there is a reasonable assurance that the
5 individual will perform the services in the later of the seasons or
6 similar periods.

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

24 (b) Any data or information required of individuals applying

1 for benefits to determine whether benefits are not payable to them
2 because of their alien status shall be uniformly required from all
3 applicants for benefits.

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

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

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

20 (11) In the case of an individual who accepts an early
21 retirement incentive package, unless he or she: ~~(i)~~ (A)
22 Establishes a well-grounded fear of imminent layoff supported by
23 definitive objective facts involving fault on the part of the
24 employer; and ~~(ii)~~ (B) establishes that he or she would suffer a

1 substantial loss by not accepting the early retirement incentive
2 package.

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

1 ~~or has been receiving remuneration in the form of an annuity,~~
2 ~~pension or other retirement pay from a base period employer or~~
3 ~~chargeable employer or from a trust fund contributed to by a base~~
4 ~~period employer or chargeable employer.~~

5 ~~(13)~~ (12) For each week in which and for fifty-two weeks
6 thereafter, beginning with the date of the decision, if the
7 commissioner finds the individual who within twenty-four calendar
8 months immediately preceding the decision, has made a false
9 statement or representation knowing it to be false or knowingly
10 fails to disclose a material fact, to obtain or increase any
11 benefit or payment under this article: *Provided,* That
12 disqualification under this subdivision does not preclude
13 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.