

ENROLLED

H. B. 4007

(By Delegates Iaquinta, Longstreth, Fleischauer,
Jones, Stephens, Walker and Azinger)

[Passed March 9, 2012; in effect ninety days from passage.]

10 AN ACT to amend and reenact amend and reenact §21A-6-3 of the Code
11 of West Virginia, 1931, as amended, relating to unemployment
12 benefits for certain spouses of military personnel; providing
13 that an individual who has voluntarily quit employment to
14 accompany a spouse serving in active military service who has
15 been reassigned from one military assignment to another is not
16 disqualified for benefits; and providing that the account of
17 the employer of the individual who leaves employment to
18 accompany a spouse reassigned from one military assignment to
19 another may not be charged for those benefits.

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

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

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

24 **§21A-6-3. Disqualification for benefits.**

1 Upon the determination of the facts by the commissioner, an
2 individual 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 on the
5 part of the employer and until the individual returns to covered
6 employment and has been employed in covered employment at least
7 thirty working days.

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

1 without good cause involving fault on the part of the employer, if
2 the individual was compelled to leave his or her work for his or
3 her own health-related reasons and notifies the employer prior to
4 leaving the job or within two business days after leaving the job
5 or as soon as practicable and presents written certification from
6 a licensed physician within thirty days of leaving the job that his
7 or her work aggravated, worsened or will worsen the individual's
8 health problem.

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

20 If he or she were discharged from his or her most recent work
21 for one of the following reasons, or if he or she were discharged
22 from his or her last thirty days employing unit for one of the
23 following reasons: Gross misconduct consisting of willful
24 destruction of his or her employer's property; assault upon the

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

23 (3) For the week in which he or she failed without good cause
24 to apply for available, suitable work, accept suitable work when

1 offered, or return to his or her customary self-employment when
2 directed to do so by the commissioner, and for the four weeks which
3 immediately follow for such additional period as any offer of
4 suitable work shall continue open for his or her acceptance. The
5 disqualification carries a reduction in the maximum benefit amount
6 equal to four times the individual's weekly benefit amount.

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

1 which caused stoppage of work, there is a rebuttable presumption
2 that part of the stoppage of work which exists after a period of
3 four weeks after the termination of the labor dispute did not exist
4 because of the labor dispute; and in that event the burden is upon
5 the employer or other interested party to show otherwise.

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

8 (a) Wages in lieu of notice;

9 (b) Compensation for temporary total disability under the
10 workers' compensation law of any state or under a similar law of
11 the United States; or

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

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

1 military assignment to another may not be charged.

2 (7) Benefits may not be paid to any individual on the basis of
3 any services, substantially all of which consist of participating
4 in sports or athletic events or training or preparing to so
5 participate, for any week which commences during the period between
6 two successive sport seasons (or similar periods) if the individual
7 performed the services in the first of the seasons (or similar
8 periods) and there is a reasonable assurance that the individual
9 will perform the services in the later of the seasons (or similar
10 periods).

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

1 implemented under state law as a condition for full tax credit
2 against the tax imposed by the federal Unemployment Tax Act are
3 applicable under the provisions of this section.

4 (b) Any data or information required of individuals applying
5 for benefits to determine whether benefits are not payable to them
6 because of their alien status shall be uniformly required from all
7 applicants for benefits.

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

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

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

24 (11) In the case of an individual who accepts an early

1 retirement incentive package, unless he or she: (i) Establishes a
2 well-grounded fear of imminent layoff supported by definitive
3 objective facts involving fault on the part of the employer; and
4 (ii) establishes that he or she would suffer a substantial loss by
5 not accepting the early retirement incentive package.

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

1 is receiving or has received under Title II of the Social Security
2 Act or similar payments under any Act of Congress. A claimant may
3 be required to certify as to whether or not he or she is receiving
4 or has been receiving remuneration in the form of an annuity,
5 pension or other retirement pay from a base period employer or
6 chargeable employer or from a trust fund contributed to by a base
7 period employer or chargeable employer.

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