

1 **H. B. 4007**

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

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

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

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

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

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

1 **§21A-6-3. Disqualification for benefits.**

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

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

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

1 for the purpose of this subdivision, an individual ~~shall~~ has not ~~be~~
2 ~~deemed to have~~ left his or her most recent work voluntarily without
3 good cause involving fault on the part of the employer, if ~~such~~ the
4 individual was compelled to leave his or her work for his or her
5 own health-related reasons and notifies the employer prior to
6 leaving the job or within two business days after leaving the job
7 or as soon as practicable and presents written certification from
8 a licensed physician within thirty days of leaving the job that his
9 or her work aggravated, worsened or will worsen the individual's
10 health problem.

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

23 If he or she were discharged from his or her most recent work
24 for one of the following reasons, or if he or she were discharged

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

1 termination of employment may result from ~~such~~ the act or acts.

2 (3) For the week in which he or she failed without good cause
3 to apply for available, suitable work, accept suitable work when
4 offered, or return to his or her customary self-employment when
5 directed to do so by the commissioner, and for the four weeks which
6 immediately follow for such additional period as any offer of
7 suitable work shall continue open for his or her acceptance. ~~Such~~
8 The disqualification ~~shall carry~~ carries a reduction in the maximum
9 benefit amount equal to four times the individual's weekly benefit
10 amount.

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

1 plant or operation or dismisses his or her employees in order to
2 force wage reduction, changes in hours or working conditions. For
3 the purpose of this subdivision if any stoppage of work continues
4 longer than four weeks after the termination of the labor dispute
5 which caused stoppage of work, there ~~shall be~~ is a rebuttable
6 presumption that part of the stoppage of work which exists after a
7 period of four weeks after the termination of the labor dispute did
8 not exist because of the labor dispute; and in that event the
9 burden ~~shall be~~ is upon the employer or other interested party to
10 show otherwise.

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

13 (a) Wages in lieu of notice;

14 (b) Compensation for temporary total disability under the
15 workers' compensation law of any state or under a similar law of
16 the United States; or

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

19 (6) For the week in which an individual has voluntarily quit
20 employment to marry or to perform any marital, parental or family
21 duty, or to attend to his or her personal business or affairs and
22 until the individual returns to covered employment and has been
23 employed in covered employment at least thirty working days:
24 Provided, That an individual who has voluntarily quit employment to

1 accompany a spouse serving in active military service who has been
2 reassigned from one military assignment to another is not
3 disqualified for benefits pursuant to this subdivision: *Provided*
4 however, That the account of the employer of an individual who
5 leaves the employment to accompany a spouse reassigned from one
6 military assignment to another may not be charged.

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

16 (8) (a) Benefits ~~shall~~ may not be paid on the basis of
17 services performed by an alien unless ~~such~~ the alien is an
18 individual who was lawfully admitted for permanent residence at the
19 time ~~such~~ the services were performed, was lawfully present for
20 purposes of performing ~~such~~ the services or was permanently
21 residing in the United States under color of law at the time ~~such~~
22 the services were performed (including an alien who is lawfully
23 present in the United States as a result of the application of the
24 provisions of Section 203(a)(7) or Section 212(d)(5) of the

1 Immigration and Nationality Act): *Provided*, That any modifications
2 to the provisions of Section 3304(a)(14) of the federal
3 Unemployment Tax Act as provided by Public Law 94-566 which specify
4 other conditions or other effective date than stated ~~herein~~ in this
5 subdivision for the denial of benefits based on services performed
6 by aliens and which modifications are required to be implemented
7 under state law as a condition for full tax credit against the tax
8 imposed by the federal Unemployment Tax Act ~~shall be deemed~~ are
9 applicable under the provisions of this section.

10 (b) Any data or information required of individuals applying
11 for benefits to determine whether benefits are not payable to them
12 because of their alien status shall be uniformly required from all
13 applicants for benefits.

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

19 (9) For each week in which an individual is unemployed
20 because, having voluntarily left employment to attend a school,
21 college, university or other educational institution, he or she is
22 attending ~~such~~ that school, college, university or other
23 educational institution, or is awaiting entrance thereto or is
24 awaiting the starting of a new term or session thereof, and until

1 the individual returns to covered employment.

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

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

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

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

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