

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 566**

4 (By Senators Barnes, Beach, Laird, Snyder, Tucker, Walters, Nohe
5 and Sypolt)

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported February 19, 2014.]

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10 **FISCAL
NOTE**

11
12 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia,
13 1931, as amended; and to amend said code by adding thereto a
14 new section, designated §21A-6-18, all relating to domestic
15 violence victims' eligibility for unemployment compensation
16 benefits; removing disqualification for certain victims of
17 domestic violence, sexual offenses or stalking; and requiring
18 training of WorkForce West Virginia employees in the nature
19 and dynamics of domestic violence to aid employees who
20 interact with claimants.

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; and that said code be amended by adding
24 thereto a new section, designated §21A-6-18, all to read as
25 follows:

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

27 **§21A-6-3. Disqualification for benefits.**

28 Upon the determination of the facts by the commissioner, an

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

27 (A) For health-related reasons and notifies the employer prior
28 to leaving the job or within two business days after leaving the

1 job or as soon as practicable and presents written certification
2 from a licensed physician within thirty days of leaving the job
3 that his or her work aggravated, worsened or will worsen the
4 individual's health problem; or

5 (B) (I) Due to circumstances directly resulting from:

6 (I) Domestic violence, as defined in section two hundred two,
7 article twenty-seven, chapter forty-eight;

8 (II) A sexual offense in article eight-b, chapter sixty-one of
9 this code; or

10 (III) Stalking as provided in section nine-a, article two,
11 chapter sixty-one by a family or household member as defined in
12 section two hundred four, article twenty-seven, chapter forty-
13 eight; and

14 (ii) The individual:

15 (I) Reasonably fears future domestic violence, a future sexual
16 offense or stalking at or on route to or from the individual's
17 place of employment;

18 (II) Wishes to relocate to another geographic area in order to
19 avoid future domestic violence, sexual offense or stalking against
20 the individual, the individual's family, or coworkers;

21 (III) Reasonably believes that leaving work is necessary for
22 the future safety of the individual, the individual's family, or
23 coworkers;

24 (IV) Is required to leave employment as a condition of
25 receiving services or shelter from an agency which provides support
26 services or shelter to victims of domestic violence and sexual
27 assault; or

28 (V) Reasonably believes for any reason related to domestic

1 violence or a sexual offense that termination of employment is
2 necessary for the future safety of the individual, the individual's
3 family, or coworkers.

4 (iii) The benefits payable under this paragraph (B) shall be
5 paid from the fund provided under the provisions of article eight
6 of this chapter and are not chargeable to the employer.

7 (iv) In the event that an employer contests the claim, the
8 claimant must provide documentation of other action initiated by
9 the claimant for safety including, but not limited to, a protective
10 order application, a police report, a medical record or a safety
11 plan from a licensed domestic violence or sexual assault center or
12 a licensed counselor.

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

24 If he or she were discharged from his or her most recent work
25 for one of the following reasons, or if he or she were discharged
26 from his or her last thirty days employing unit for one of the
27 following reasons: Gross misconduct consisting of willful
28 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 sixty-a without a valid
9 prescription, while at work; adulterating or otherwise manipulating
10 a sample or specimen in order to thwart a drug or alcohol test
11 lawfully required of an employee; refusal to submit to random
12 testing for alcohol or illegal controlled substances for employees
13 in safety sensitive positions as defined in section two, article
14 one-d, chapter twenty-one of this code; arson, theft, larceny,
15 fraud or embezzlement in connection with his or her work; or any
16 other gross misconduct, he or she is disqualified for benefits
17 until he or she has thereafter worked for at least thirty days in
18 covered employment: *Provided*, That for the purpose of this
19 subdivision, the words "any other gross misconduct" includes, but
20 is not limited to, any act or acts of misconduct where the
21 individual has received prior written warning that termination of
22 employment may result from the act or acts: *Provided, however,*
23 That "misconduct" shall not include any discharge due to
24 circumstances directly resulting from domestic violence, as defined
25 in section two hundred two, article twenty-seven, chapter forty-
26 eight; a sexual offense in article eight-b, chapter sixty-one of
27 this code; or stalking as defined by section nine-a, article two,
28 chapter sixty-one by a family or household member as defined in

1 section two hundred four, article twenty-seven, chapter forty-eight

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3 (3) For the week in which he or she failed without good cause
4 to apply for available, suitable work, accept suitable work when
5 offered, or return to his or her customary self-employment when
6 directed to do so by the commissioner, and for the four weeks which
7 immediately follow for such additional period as any offer of
8 suitable work shall continue open for his or her acceptance. The
9 disqualification carries a reduction in the maximum benefit amount
10 equal to four times the individual's weekly benefit 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)~~ (A) Was not participating, financing
16 or directly interested in the dispute; and ~~(2)~~ (B) did not belong
17 to 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 is
20 imposed if the employees are required to accept wages, hours or
21 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
25 plant or operation or dismisses his or her employees in order to
26 force wage reduction, changes in hours or working conditions. For
27 the purpose of this subdivision if any stoppage of work continues
28 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)~~ (A) Wages in lieu of notice;

9 ~~(b)~~ (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)~~ (C) Unemployment compensation benefits under the laws of
13 the 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
25 military assignment to another may not be charged.

26 (7) Benefits may not be paid to any individual on the basis of
27 any services, substantially all of which consist of participating
28 in sports or athletic events or training or preparing to ~~so~~

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

7 (8) ~~(a)~~ (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)~~ (B) Any data or information required of individuals
25 applying for benefits to determine whether benefits are not payable
26 to them because of their alien status shall be uniformly required
27 from all applicants for benefits.

28 ~~(c)~~ (C) In the case of an individual whose application for

1 benefits would otherwise be approved, no determination that
2 benefits to the individual are not payable because of his or her
3 alien status may be made except upon a preponderance of the
4 evidence.

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

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

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

23 (12) For each week with respect to which he or she is
24 receiving or has received benefits under Title II of the Social
25 Security Act or similar payments under any Act of Congress, or
26 remuneration in the form of an annuity, pension or other retirement
27 pay from a base period employer or chargeable employer or from any
28 trust or fund contributed to by a base period employer or

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

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

1 prosecution under section seven, article ten of this chapter.

2 **§21A-6-18. Administration of domestic violence claims.**

3 The Executive Director of Workforce West Virginia shall:

4 (1) Promulgate procedural rules providing for the
5 confidentiality of information, including without limitation,
6 addresses and contact information obtained in evaluating claims for
7 domestic violence, sexual offenses and stalking by family or
8 household members; and

9 (2) Establish and implement a training curriculum addressing
10 the nature and dynamics of domestic violence to aid employees who
11 interact with claimants:

12 (A) In determining whether a claimant's separation stems from
13 domestic violence, a sexual offense or stalking by family or
14 household members; and

(B) In reliably screening, identifying and adjudicating those
claims.

NOTE: The purpose of this bill is to prevent an individual from being disqualified from receiving unemployment compensation benefits when their separation from employment is due to domestic violence, sexual offenses or stalking by family or household members. The individual must seek and accept new suitable work in order to remain eligible for benefits. The bill provides that the employer is not chargeable for benefits paid when the separation from work is for those reasons.

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

§21A-6-18 is new; therefore, strike-throughs and underscoring have been omitted.