

Senate Bill No. 566

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

[Introduced February 13, 2014; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

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

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

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

1 individual has not left his or her most recent work voluntarily
2 without good cause involving fault on the part of the employer, if
3 the individual was compelled to leave his or her work: ~~for his or~~
4 ~~her own~~

5 (A) For health-related reasons and notifies the employer prior
6 to leaving the job or within two business days after leaving the
7 job or as soon as practicable and presents written certification
8 from a licensed physician within thirty days of leaving the job
9 that his or her work aggravated, worsened or will worsen the
10 individual's health problem; or

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

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

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

16 (III) Stalking as provided in section nine-a, article two,
17 chapter sixty-one by a family or household member as defined in
18 section two hundred four, article twenty-seven, chapter forty-
19 eight; and

20 (ii) The individual:

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

24 (II) Wishes to relocate to another geographic area in order to

1 avoid future domestic violence, sexual offense or stalking against
2 the individual, the individual's family, or coworkers;

3 (III) Reasonably believes that leaving work is necessary for
4 the future safety of the individual, the individual's family, or
5 coworkers;

6 (IV) Is required to leave employment as a condition of
7 receiving services or shelter from an agency which provides support
8 services or shelter to victims of domestic violence and sexual
9 assault; or

10 (V) Reasonably believes for any reason related to domestic
11 violence or a sexual offense that termination of employment is
12 necessary for the future safety of the individual, the individual's
13 family, or coworkers.

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

17 (2) For the week in which he or she was discharged from his or
18 her most recent work for misconduct and the six weeks immediately
19 following that week; or for the week in which he or she was
20 discharged from his or her last thirty-day employing unit for
21 misconduct and the six weeks immediately following that week. The
22 disqualification carries a reduction in the maximum benefit amount
23 equal to six times the individual's weekly benefit. However, if
24 the claimant returns to work in covered employment for thirty days

1 during his or her benefit year, whether or not the days are
2 consecutive, the maximum benefit amount is increased by the amount
3 of the decrease imposed under the disqualification; except that:

4 If he or she were discharged from his or her most recent work
5 for one of the following reasons, or if he or she were discharged
6 from his or her last thirty days employing unit for one of the
7 following reasons: Gross misconduct consisting of willful
8 destruction of his or her employer's property; assault upon the
9 person of his or her employer or any employee of his or her
10 employer; if the assault is committed at the individual's place of
11 employment or in the course of employment; reporting to work in an
12 intoxicated condition, or being intoxicated while at work;
13 reporting to work under the influence of any controlled substance,
14 as defined in chapter sixty-a of this code without a valid
15 prescription, or being under the influence of any controlled
16 substance, as defined in ~~said~~ chapter sixty-a without a valid
17 prescription, while at work; adulterating or otherwise manipulating
18 a sample or specimen in order to thwart a drug or alcohol test
19 lawfully required of an employee; refusal to submit to random
20 testing for alcohol or illegal controlled substances for employees
21 in safety sensitive positions as defined in section two, article
22 one-d, chapter twenty-one of this code; arson, theft, larceny,
23 fraud or embezzlement in connection with his or her work; or any
24 other gross misconduct, he or she is disqualified for benefits

1 until he or she has thereafter worked for at least thirty days in
2 covered employment: *Provided*, That for the purpose of this
3 subdivision, the words "any other gross misconduct" includes, but
4 is not limited to, any act or acts of misconduct where the
5 individual has received prior written warning that termination of
6 employment may result from the act or acts.

7 An individual may not be disqualified under this subdivision
8 if the misconduct or gross misconduct was due to circumstances
9 directly resulting from domestic violence, as defined in section
10 two hundred two, article twenty-seven, chapter forty-eight; a
11 sexual offense in article eight-b, chapter sixty-one of this code;
12 or stalking as defined by section nine-a, article two, chapter
13 sixty-one by a family or household member as defined in section two
14 hundred four, article twenty-seven, chapter forty-eight, and the
15 individual: (I) Reasonably fears future domestic violence, a future
16 sexual offense, or stalking at or on route to or from the
17 individual's place of employment; (ii) wishes to relocate to
18 another geographic area in order to avoid future domestic violence,
19 sexual offense, or stalking against the individual, the
20 individual's family, or coworkers; (iii) reasonably believes that
21 leaving work is necessary for the future safety of the individual,
22 the individual's family, or coworkers; (iv) is required to leave
23 employment as a condition of receiving services or shelter from an
24 agency which provides support services or shelter to victims of

1 domestic violence and sexual assault, or (v) reasonably believes
2 for any reason related to domestic violence or a sexual offense
3 that termination of employment is necessary for the future safety
4 of the individual, the individual's family, or coworkers. The
5 benefits payable under this provision shall be paid from the fund
6 provided under the provisions of article eight of this chapter and
7 are not chargeable to the employer.

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

16 (4) For a week in which his or her total or partial
17 unemployment is due to a stoppage of work which exists because of
18 a labor dispute at the factory, establishment or other premises at
19 which he or she was last employed, unless the commissioner is
20 satisfied that he or she: ~~(1)~~ (A) Was not participating, financing
21 or directly interested in the dispute; and ~~(2)~~ (B) did not belong
22 to a grade or class of workers who were participating, financing or
23 directly interested in the labor dispute which resulted in the
24 stoppage of work. No disqualification under this subdivision is

1 imposed if the employees are required to accept wages, hours or
2 conditions of employment substantially less favorable than those
3 prevailing for similar work in the locality, or if employees are
4 denied the right of collective bargaining under generally
5 prevailing conditions, or if an employer shuts down his or her
6 plant or operation or dismisses his or her employees in order to
7 force wage reduction, changes in hours or working conditions. For
8 the purpose of this subdivision if any stoppage of work continues
9 longer than four weeks after the termination of the labor dispute
10 which caused stoppage of work, there is a rebuttable presumption
11 that part of the stoppage of work which exists after a period of
12 four weeks after the termination of the labor dispute did not exist
13 because of the labor dispute; and in that event the burden is upon
14 the employer or other interested party to show otherwise.

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

17 ~~(a)~~ (A) Wages in lieu of notice;

18 ~~(b)~~ (B) Compensation for temporary total disability under the
19 workers' compensation law of any state or under a similar law of
20 the United States; or

21 ~~(c)~~ (C) Unemployment compensation benefits under the laws of
22 the United States or any other state.

23 (6) For the week in which an individual has voluntarily quit
24 employment to marry or to perform any marital, parental or family

1 duty, or to attend to his or her personal business or affairs and
2 until the individual returns to covered employment and has been
3 employed in covered employment at least thirty working days:
4 *Provided*, That an individual who has voluntarily quit employment to
5 accompany a spouse serving in active military service who has been
6 reassigned from one military assignment to another is not
7 disqualified for benefits pursuant to this subdivision: *Provided*
8 *however*, That the account of the employer of an individual who
9 leaves the employment to accompany a spouse reassigned from one
10 military assignment to another may not be charged.

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

20 (8) ~~(a)~~ (A) Benefits may not be paid on the basis of services
21 performed by an alien unless the alien is an individual who was
22 lawfully admitted for permanent residence at the time the services
23 were performed, was lawfully present for purposes of performing the
24 services or was permanently residing in the United States under

1 color of law at the time the services were performed (including an
2 alien who is lawfully present in the United States as a result of
3 the application of the provisions of Section 203(a)(7) or Section
4 212(d)(5) of the Immigration and Nationality Act): *Provided*, That
5 any modifications to the provisions of Section 3304(a)(14) of the
6 federal Unemployment Tax Act as provided by Public Law 94-566 which
7 specify other conditions or other effective date than stated in
8 this subdivision for the denial of benefits based on services
9 performed by aliens and which modifications are required to be
10 implemented under state law as a condition for full tax credit
11 against the tax imposed by the federal Unemployment Tax Act are
12 applicable under the provisions of this section.

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

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

22 (9) For each week in which an individual is unemployed
23 because, having voluntarily left employment to attend a school,
24 college, university or other educational institution, he or she is

1 attending that school, college, university or other educational
2 institution, or is awaiting entrance thereto or is awaiting the
3 starting of a new term or session thereof, and until the individual
4 returns to covered employment.

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

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

16 (12) For each week with respect to which he or she is
17 receiving or has received benefits under Title II of the Social
18 Security Act or similar payments under any Act of Congress, or
19 remuneration in the form of an annuity, pension or other retirement
20 pay from a base period employer or chargeable employer or from any
21 trust or fund contributed to by a base period employer or
22 chargeable employer or any combination of the above, the weekly
23 benefit amount payable to the individual for that week shall be
24 reduced (but not below zero) by the prorated weekly amount of those

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

18 (13) For each week in which and for fifty-two weeks
19 thereafter, beginning with the date of the decision, if the
20 commissioner finds the individual who within twenty-four calendar
21 months immediately preceding the decision, has made a false
22 statement or representation knowing it to be false or knowingly
23 fails to disclose a material fact, to obtain or increase any
24 benefit or payment under this article: *Provided*, That

1 disqualification under this subdivision does not preclude
2 prosecution under section seven, article ten of this chapter.

3 **§21A-6-18. Administration of domestic violence claims.**

4 The Executive Director of Workforce West Virginia shall:

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

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

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

16 (B) In reliably screening, identifying and adjudicating those
17 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.