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SENATE BILL NO. 219

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 8, 2022)

(Patron Prior to Substitute—Senator McPike)

A BILL to amend and reenact §§ 30-222, 60.2-111, and 60.2-619, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 1 of Title 60.2 sections numbered 60.2-121.2 and 60.2-121.3, relating to Virginia Employment Commission; administrative reforms; reporting requirements; electronic submissions; Appeals Ombudsman position established.

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-222, 60.2-111, and 60.2-619, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 1 of Title 60.2 sections numbered 60.2-121.2 and 60.2-121.3 as follows:

§ 30-222. Powers and duties of the Commission; subcommittee established.

A. The Commission shall have the following powers and duties:

1. Evaluate the impact of existing statutes and proposed legislation on unemployment compensation and the Unemployment Trust Fund;

2. Assess the Commonwealth's unemployment compensation programs and examine ways to enhance effectiveness;

3. Monitor the current status and long-term projections for the Unemployment Trust Fund; and

4. Report annually its findings and recommendations to the General Assembly and the Governor.

B. *Within the Commission there shall be established a subcommittee on unemployment insurance (UI) that shall be responsible for monitoring the Virginia Employment Commission's management of the Commonwealth's unemployment insurance system. The subcommittee shall be responsible for monitoring the Virginia Employment Commission's following operations:*

1. *Key performance metrics related to unemployment insurance backlogs;*

2. *Efforts to identify, prevent, and recover incorrect unemployment insurance benefit payments, including fraudulent payments;*

3. *Modernization of the unemployment insurance information technology system and subsequent efforts to improve functionality;*

4. *Expenditures of state funds appropriated for unemployment insurance administration; and*

5. *Implementation of recommendations from the 2021 Operations and Performance of the Virginia Employment Commission report by the Joint Legislative Audit and Review Commission.*

C. *The subcommittee established in subsection B shall include (i) at least one employee stakeholder representative, (ii) at least one employer representative, (iii) at least one member of the Commission on Unemployment Compensation, and (iv) at least one member from each of the following committees: the House Committee on Appropriations, the House Committee on Commerce and Energy, the Senate Committee on Commerce and Labor, and the Senate Committee on Finance and Appropriations.*

D. *The subcommittee established in subsection B shall meet at least once each quarter from July 1, 2022, through June 30, 2025, and shall report at least annually, beginning on December 1, 2022, to the House Committee on Appropriations, the House Committee on Commerce and Energy, the Senate Committee on Commerce and Labor, and the Senate Committee on Finance and Appropriations.*

E. *The Commission shall periodically convene an advisory committee composed of an employer representative, an employee representative, a labor economist, a finance expert, a labor law expert, and any other stakeholders or subject matter experts deemed appropriate by the Commission for the following purposes: (i) to review UI benefits, replacement ratios, and reciprocity rates; (ii) to identify factors that affect UI benefits and reciprocity, such as design of UI benefit calculations or UI eligibility criteria; (iii) to assess the advantages and disadvantages of potential changes to benefits; and (iv) to recommend to the Commission options to change benefit levels when needed. This advisory committee shall be established by December 1, 2022, and shall be convened at least every five years thereafter.*

§ 60.2-111. Duties and powers of Commission; reporting requirements.

A. It shall be the duty of the Commission to administer this title. It shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action, including the appointment of advisory groups, as it deems necessary or suitable to that end. Such rules and regulations shall be subject to the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, except as to the subject matter of subdivisions 2 and 3 of § 60.2-515, which shall become effective in the manner prescribed by

60 § 2.2-4103. The Commission shall determine its own organization and methods of procedure in
61 accordance with provisions of this title, and shall have an official seal which shall be judicially noticed.

62 B. The Commission shall prepare an annual balance sheet of the moneys in the fund and in the
63 Unemployment Trust Fund to the credit of the Commonwealth in which there shall be provided, if
64 possible, a reserve against the liability in future years to pay benefits in excess of the ~~then current~~
65 *then-current* taxes. That reserve shall be set up by the Commission in accordance with accepted actuarial
66 principles on the basis of statistics of employment, business activity, and other relevant factors for the
67 longest possible period. Whenever the Commission believes that a change in tax or benefit rates is
68 necessary to protect the solvency of the Fund, it shall promptly so inform the Governor and the General
69 Assembly and make recommendations with respect thereto.

70 C. *In preparing the annual balance sheet required by subsection B, the Commission shall regularly*
71 *track metrics related to unemployment insurance benefits, establish a mechanism to help assess the*
72 *adequacy of benefits, and examine metrics related to reciprocity, average benefit levels, and benefit*
73 *income replacement ratios. The annual balance sheet shall include the following calculations: (i) the*
74 *average unemployment insurance benefit levels, (ii) the average income replacement of unemployment*
75 *insurance benefits, and (iii) the reciprocity rate for unemployment insurance benefits in the*
76 *Commonwealth.*

77 D. *The Commission, as part of its biennial strategic plan submitted to the Department of Planning*
78 *and Budget, shall develop and maintain a comprehensive unemployment insurance Resiliency Plan that*
79 *describes specific actions the Commission will take, depending on the level of increase in unemployment*
80 *insurance (UI) claims, to address staffing, communications, and other relevant aspects of operations to*
81 *ensure continued efficient and effective administration of the UI program. The Resiliency Plan shall*
82 *include proposed actions consistent with the following objectives to effectively prepare for periods of*
83 *high unemployment:*

84 1. *Develop specific strategies or steps the Commission will take to modify staffing levels in response*
85 *to incidents that increase UI program demand. These strategies or steps shall (i) include a staffing plan*
86 *for varying levels of UI workload volume, (ii) cover several scenarios that may affect UI assistance*
87 *services, (iii) explain how existing staff would be reallocated to high-priority functions in response to*
88 *high demand, and (iv) describe how the Commission's hiring process will be streamlined to fill key*
89 *vacant positions such as adjudication and appeals staff.*

90 2. *Develop specific strategies or steps the Commission will take to modify policies, procedures, or*
91 *processes in response to high demands on its services.*

92 3. *Outline a strategy for clearly communicating key UI program changes to customers. This strategy*
93 *shall indicate which staff will be responsible for different types of communications and include several*
94 *communications goals, such as clearly conveying UI program and policy changes.*

95 4. *Outline a strategy for clearly communicating important UI information to Commission staff, the*
96 *public, and the General Assembly.*

97 5. *Formalize a policy for prioritizing and assigning claims for adjudication during periods of high*
98 *claims volume. This policy shall detail how prioritization may change in response to claims volume and*
99 *state that the policy of the Commission is to generally prioritize resolving older claims before newer*
100 *claims.*

101 6. *Identify other tactical actions to be taken to ensure the continuity of UI claims processing and*
102 *customer service.*

103 **§ 60.2-121.2. Electronic submission of information; payments.**

104 A. *Each employer subject to the provisions of this title shall submit claim-related forms, including*
105 *separation information, using an electronic format as prescribed by the Commission. An employer shall*
106 *submit any other information related to a claim, as defined in § 60.2-528.1, at any time when requested*
107 *by the Commission, to the Commission by electronic means, unless the employer has been granted a*
108 *waiver by the Commission. The Commission may also require, at any time, that an employer submit*
109 *unemployment insurance tax payments electronically, unless the employer has been granted a waiver by*
110 *the Commission.*

111 B. *The Commission may grant a waiver to an employer from providing information or payments*
112 *electronically pursuant to this section at any time. The Commission may grant a waiver only if the*
113 *Commission finds that the electronic submission requirement creates an unreasonable burden on the*
114 *employer. All requests for a waiver shall be submitted in writing. The Commission shall promulgate*
115 *regulations to establish criteria for granting such waiver to individual employers.*

116 **§ 60.2-121.3. Appeals Ombudsman; established; responsibilities.**

117 A. *The Commission shall create the Office of the Appeals Ombudsman (the Office) and shall appoint*
118 *an Appeals Ombudsman to head the Office. The Appeals Ombudsman shall provide neutral educational*
119 *information and assistance to, shall protect the interests of, and shall ensure that due process is*
120 *afforded to all persons seeking assistance in appeals proceedings brought pursuant to Chapter 6*
121 *(§ 60.2-600 et seq.). The Appeals Ombudsman shall be an attorney licensed by the Virginia State Bar, in*

active status, and in good standing. Subject to annual appropriations, the Appeals Ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this section. The Appeals Ombudsman and personnel of the Office shall carry out their duties with impartiality and shall not serve as an advocate for any person or provide legal advice.

B. The Appeals Ombudsman shall maintain data on inquiries received related to the appeals process and claims undergoing appeal, the types of assistance requested, and actions taken and the disposition of each such matter. The Appeals Ombudsman shall report information summarizing this data, including outcomes of individual cases, without disclosing individual-level identifying data, to the Commission at least once annually. The Appeals Ombudsman shall carry out any additional activities as the Commission determines to be appropriate.

C. All memoranda, work products, and other materials contained in the case files of the Appeals Ombudsman and personnel of the Office shall be confidential. Any communication between the Appeals Ombudsman and personnel of the Office and a person receiving assistance that is made during or in connection with the provision of services of the Appeals Ombudsman and personnel of the Office shall be confidential. Confidential materials and communications shall not be subject to disclosure and shall not be admissible in any judicial or administrative proceeding except where (i) a threat to inflict bodily injury is made; (ii) communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime; (iii) a complaint is made against the Appeals Ombudsman or personnel of the Office by a person receiving assistance to the extent necessary for the complainant to prove misconduct or the Appeals Ombudsman or personnel of the Office to defend against such complaint; or (iv) communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against the legal representative of a person who received assistance from the Appeals Ombudsman or personnel of the Office. Confidential materials and communications as described in this section are not subject to mandatory disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. The Appeals Ombudsman and personnel of the Office shall be immune from civil liability in their performance of the duties specified in this section.

§ 60.2-619. (Effective until July 1, 2022) Determinations and decisions by deputy; appeals therefrom.

A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim. On the basis of the facts found by him, the deputy shall either:

a. Determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission, which tribunal or Commission shall make its determination in accordance with the procedure described in § 60.2-620.

2. When the payment or denial of benefits will be determined by the provisions of subdivision 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to any appeal tribunal, which shall make its determination in accordance with the procedure described in § 60.2-620.

B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant and all subsequent employing units, and any reimbursable employing units that may be liable for reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall not have any effect upon the claim for benefits. If a claimant has had a determination of initial eligibility for benefits under this chapter, as evidenced by the issuance of compensation or waiting-week credit, payments shall continue, subject to a presumption of continued eligibility and in accordance with the terms of this subsection, until a determination is made that provides the claimant notice and an opportunity to be heard. When a question concerning continued eligibility for benefits arises, a determination shall be made as to whether it affects future weeks of benefits or only past weeks. With respect to future weeks, presumptive payment shall not be made until but no later than the end of the week following the week in which such issue arises, regardless of the type of issue. With respect to past weeks, presumptive payment shall be issued immediately, regardless of the type of issue. Notice shall be given to individuals who receive payments under such presumption that pending eligibility may affect their entitlement to the payment and may result in an overpayment that requires repayment.

C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by mailing such notice to the claimant's last known address. In addition, notice of any determination that involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be promptly given in the same manner to the most recent 30-day or 240-hour employing unit by whom the claimant was last employed and any subsequent employing unit which is a party. The Commission may dispense with the giving of notice of any determination to any employing unit, and such employing unit

shall not be entitled to such notice if it has failed to respond timely or adequately to a written request of the Commission for information, as required by § 60.2-528.1, from which the deputy may have determined that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks.

D. Such determination or decision shall be final unless the claimant or any such employing unit files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or (iii) within 30 days after such notification was mailed to the last known address of an interstate claimant. For good cause shown, the 30-day period may be extended. *A claim that the Commission has determined to be invalid because of monetary ineligibility shall first be subject to review only upon a request for redetermination pursuant to § 60.2-629. The Commission shall issue a new monetary determination as a result of such review, and such monetary determination shall become final unless appealed by the claimant within 30 days of the date of mailing. The Commission shall clearly set out the process for requesting a redetermination and the process for filing an appeal on each monetary determination issued. Monetary ineligibility does not include an appeal on the effective date of the claim.*

E. Benefits shall be paid promptly in accordance with a determination or redetermination under this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision, regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision. If a decision of an appeal tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid until such time as a court decision has become final so that no further appeal can be taken. If an appeal is taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the employer under § 60.2-530 only when, and as of the date on which, as the result of an appeal, the courts finally determine that the Commission should have awarded benefits to the claimant or claimants involved in such appeal.

§ 60.2-619. (Effective July 1, 2022) Determinations and decisions by deputy; appeals therefrom.

A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim. On the basis of the facts found by him, the deputy shall either:

a. Determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission, which tribunal or Commission shall make its determination in accordance with the procedure described in § 60.2-620.

2. When the payment or denial of benefits will be determined by the provisions of subdivision 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to any appeal tribunal, which shall make its determination in accordance with the procedure described in § 60.2-620.

B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant and all subsequent employing units, and any reimbursable employing units which may be liable for reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall not have any effect upon the claim for benefits.

C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by mailing such notice to the claimant's last known address. In addition, notice of any determination which involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be promptly given in the same manner to the most recent 30-day or 240-hour employing unit by whom the claimant was last employed and any subsequent employing unit which is a party. The Commission may dispense with the giving of notice of any determination to any employing unit, and such employing unit shall not be entitled to such notice if it has failed to respond timely or adequately to a written request of the Commission for information, as required by § 60.2-528.1, from which the deputy may have determined that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks.

D. Such determination or decision shall be final unless the claimant or any such employing unit files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or

(iii) within 30 days after such notification was mailed to the last known address of an interstate claimant. For good cause shown, the 30-day period may be extended. *A claim that the Commission has determined to be invalid because of monetary ineligibility shall first be subject to review only upon a request for redetermination pursuant to § 60.2-629. The Commission shall issue a new monetary determination as a result of such review, and such monetary determination shall become final unless appealed by the claimant within 30 days of the date of mailing. The Commission shall clearly set out the process for requesting a redetermination and the process for filing an appeal on each monetary determination issued. Monetary ineligibility does not include an appeal on the effective date of the claim.*

E. Benefits shall be paid promptly in accordance with a determination or redetermination under this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision, regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision. If a decision of an appeal tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid until such time as a court decision has become final so that no further appeal can be taken. If an appeal is taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the employer under § 60.2-530 only when, and as of the date on which, as the result of an appeal, the courts finally determine that the Commission should have awarded benefits to the claimant or claimants involved in such appeal.

2. That the Virginia Department of Human Resource Management shall lead a multiagency work group, composed of agency leaders and human resources staff from state agencies most likely to be in need of staffing assistance during emergencies, to examine the feasibility of, funding for, and policies and procedures necessary for (i) granting agencies exemptions from certain competitive hiring requirements during emergencies; (ii) requiring selected state agency staff to temporarily support other agencies in need of staffing assistance during emergencies through existing or new state initiatives; and (iii) providing necessary funding to cover the associated costs. The work group shall propose criteria to determine under what circumstances these emergency hiring practices may be invoked and a process for invoking this authority as well as terminating it. The work group shall submit its findings to the Secretary of Administration and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations by December 1, 2022.

3. That the Virginia Employment Commission (the Commission) shall, by December 1, 2022, direct staff in its internal audit division to review and revise documents and online resources to clearly describe and explain to claimants and employers requirements for unemployment compensation. In its review and revision, the internal audit division shall describe and explain (i) eligibility criteria for unemployment insurance, (ii) how to navigate the unemployment insurance claims and appeals process, and (iii) how to determine the status or outcome of a claim. The Commission shall consider examples from other states, collect input from Commission staff and unemployment compensation recipients, and competitively procure a third-party contractor with expertise in unemployment insurance and customer communications to help with efforts in reviewing and revising its documents and online resources.