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HOUSE BILL NO. 270

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 2.2-3705.7, 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.

Patron—Byron

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.7, 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:

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in the Commonwealth. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; the Governor's chief of staff, counsel, director of policy, and Cabinet Secretaries; the Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for a public official identified in this subdivision for his personal or deliberative use.

3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed or accessed material or resources from a library and (b) the material or resources such patron borrowed or accessed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Information furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of

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59 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
60 formulating advisory opinions to members on standards of conduct, or both.

61 7. Customer account information of a public utility affiliated with a political subdivision of the
62 Commonwealth, including the customer's name and service address, but excluding the amount of utility
63 service provided and the amount of money charged or paid for such utility service.

64 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
65 Authority concerning individuals who have applied for or received loans or other housing assistance or
66 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
67 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
68 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
69 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
70 waiting list for housing assistance programs funded by local governments or by any such authority; or
71 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
72 local government agency concerning persons who have applied for occupancy or who have occupied
73 affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's
74 own information shall not be denied.

75 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if
76 disclosure of such information would have a detrimental effect upon the negotiating position of a
77 governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

78 10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled
79 plant and animal species, natural communities, caves, and significant historic and archaeological sites if,
80 in the opinion of the public body that has the responsibility for such information, disclosure of the
81 information would jeopardize the continued existence or the integrity of the resource. This exclusion
82 shall not apply to requests from the owner of the land upon which the resource is located.

83 11. Memoranda, graphics, video or audio tapes, production models, data, and information of a
84 proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a
85 specific lottery game design, development, production, operation, ticket price, prize structure, manner of
86 selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of
87 drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such
88 information not been publicly released, published, copyrighted, or patented. Whether released, published,
89 or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon
90 the first day of sales for the specific lottery game to which it pertains.

91 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local
92 retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a
93 trust established by one or more local public bodies to invest funds for post-retirement benefits other
94 than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the
95 board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the board of
96 visitors of The College of William and Mary in Virginia, acting pursuant to § 23.1-2803, or by the
97 Virginia College Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or
98 disposition of a security or other ownership interest in an entity, where such security or ownership
99 interest is not traded on a governmentally regulated securities exchange, if disclosure of such
100 information would (i) reveal confidential analyses prepared for the board of visitors of the University of
101 Virginia, prepared for the board of visitors of The College of William and Mary in Virginia, prepared
102 by the retirement system, a local finance board or board of trustees, or the Virginia College Savings
103 Plan, or provided to the retirement system, a local finance board or board of trustees, or the Virginia
104 College Savings Plan under a promise of confidentiality of the future value of such ownership interest or
105 the future financial performance of the entity and (ii) have an adverse effect on the value of the
106 investment to be acquired, held, or disposed of by the retirement system, a local finance board or board
107 of trustees, the board of visitors of the University of Virginia, the board of visitors of The College of
108 William and Mary in Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
109 construed to prevent the disclosure of information relating to the identity of any investment held, the
110 amount invested, or the present value of such investment.

111 13. Financial, medical, rehabilitative, and other personal information concerning applicants for or
112 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority
113 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

114 14. Information held by the Virginia Commonwealth University Health System Authority pertaining
115 to any of the following: an individual's qualifications for or continued membership on its medical or
116 teaching staffs; proprietary information gathered by or in the possession of the Authority from third
117 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
118 awarding contracts for construction or the purchase of goods or services; information of a proprietary
119 nature produced or collected by or for the Authority or members of its medical or teaching staffs;
120 financial statements not publicly available that may be filed with the Authority from third parties; the

identity, accounts, or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such information has not been publicly released, published, copyrighted, or patented. This exclusion shall also apply when such information is in the possession of Virginia Commonwealth University.

15. Information held by the Department of Environmental Quality, the State Water Control Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such information shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prevent the disclosure of information related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed. If the value of the prize won by the winner exceeds \$10 million, the information described in clause (ii) shall not be disclosed unless the winner consents in writing to such disclosure.

18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

19. Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.

20. Information held by the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

21. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prevent the disclosure of information defined as directory information under regulations implementing the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For such information of persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such information for inspection and copying.

22. Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management that reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

23. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local

retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets provided by a private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to prevent the disclosure of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

25. Information held by the Department of Corrections made confidential by former § 53.1-233.

26. Information maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the information.

28. Information maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such information is not otherwise available to the public and the disclosure of such information would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities or materials created for the investigation and prosecution of a criminal case.

30. Information provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft where the information would not be subject to disclosure by the entity providing the information. The entity providing the information to the Department of Aviation shall identify the specific information to be protected and the applicable provision of this chapter that excludes the information from mandatory disclosure.

31. Information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are discussed by any sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5, or (iii) individual cases of abuse, neglect, or exploitation of adults as defined in § 63.2-1603 are discussed by multidisciplinary teams established pursuant to §§ 15.2-1627.5 and 63.2-1605. The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target companies, specific allocation of resources and staff for marketing activities, and specific marketing activities that would reveal to the Commonwealth's competitors for economic development projects the

strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and operational plan shall not be redacted or withheld pursuant to this subdivision.

34. Information discussed in a closed session of the Physical Therapy Compact Commission or the Executive Board or other committees of the Commission for purposes set forth in subsection E of § 54.1-3491.

35. Information held by the Commonwealth of Virginia Innovation Partnership Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority, relating to (i) internal deliberations of or decisions by the Authority on the pursuit of particular investment strategies prior to the execution of such investment strategies and (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the Authority, if such disclosure of records pursuant to clause (i) or (ii) would have an adverse impact on the financial interest of the Authority or a private entity.

36. Personal information provided to or obtained by the Virginia Lottery in connection with the voluntary exclusion program administered pursuant to § 58.1-4015.1.

37. Personal information provided to or obtained by the Virginia Lottery concerning the identity of any person reporting prohibited conduct pursuant to § 58.1-4043.

38. *Confidential information related to unemployment compensation appeals proceedings as contained in the memoranda, work products, and other materials in the case files of the Appeals Ombudsman and personnel of the Office of the Appeal Ombudsman pursuant to § 60.2-121.3.*

§ 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 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 Labor and Commerce, 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 Labor and Commerce, the Senate Committee on Commerce and Labor, and the Senate Committee on Finance and Appropriations.*

E. *The Commission shall convene an advisory committee composed of stakeholders and subject matter experts 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 report to the Commission at least twice annually 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 § 2.2-4103. The Commission shall determine its own organization and methods of procedure in accordance with provisions of this title, and shall have an official seal which shall be judicially noticed.

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

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

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

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

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

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

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

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

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

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

A. Each employer subject to the provisions of this title shall submit information related to a claim, as defined in § 60.2-528.1, at any time when requested by the Commission, to the Commission by electronic means, unless the employer has been granted a waiver by the Commission. The Commission may also require, at any time, that an employer submit unemployment insurance tax payments electronically, unless the employer has been granted a waiver by the Commission.

B. The Commission may grant a waiver to an employer from providing information or payments electronically pursuant to this section at any time. The Commission shall promulgate regulations to establish criteria for granting such waiver to individual employers.

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

A. The Commission shall create the Office of the Appeals Ombudsman (the Office) and shall appoint an Appeals Ombudsman to head the Office. The Appeals Ombudsman shall provide neutral educational information and assistance to, shall protect the interests of, and shall ensure that due process is afforded to all persons seeking assistance in appeals proceedings brought pursuant to Chapter 6 (§ 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 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

428 manner denies benefits to the claimant for one or more weeks.

429 D. Such determination or decision shall be final unless the claimant or any such employing unit files
430 an appeal from such determination or decision (i) within 30 calendar days after the delivery of such
431 notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or
432 (iii) within 30 days after such notification was mailed to the last known address of an interstate
433 claimant. For good cause shown, the 30-day period may be extended. *Claims that have been determined*
434 *invalid by the Commission as a result of the claimant's monetary ineligibility shall not be eligible for*
435 *appeal through the Commission's appeals division.*

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

450 **§ 60.2-619. (Effective July 1, 2022) Determinations and decisions by deputy; appeals therefrom.**

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

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

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

458 2. When the payment or denial of benefits will be determined by the provisions of subdivision 2 of
459 § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to
460 any appeal tribunal, which shall make its determination in accordance with the procedure described in
461 § 60.2-620.

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

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

478 D. Such determination or decision shall be final unless the claimant or any such employing unit files
479 an appeal from such determination or decision (i) within 30 calendar days after the delivery of such
480 notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or
481 (iii) within 30 days after such notification was mailed to the last known address of an interstate
482 claimant. For good cause shown, the 30-day period may be extended. *Claims that have been determined*
483 *invalid by the Commission as a result of the claimant's monetary ineligibility shall not be eligible for*
484 *appeal through the Commission's appeals division.*

485 E. Benefits shall be paid promptly in accordance with a determination or redetermination under this
486 chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court
487 under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision,
488 regardless of the pendency of the period to file an appeal or petition for judicial review that is provided
489 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 multi-agency 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.