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SENATE BILL NO. 646

Offered January 17, 2022

A *BILL to amend and reenact § 60.2-618 of the Code of Virginia, relating to unemployment compensation; disqualification for benefits; misconduct does not include refusing COVID-19 vaccine.*

Patron—Cosgrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 60.2-618 of the Code of Virginia is amended and reenacted as follows:

§ 60.2-618. Disqualification for benefits.

An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked 30 days or 240 hours or from any subsequent employing unit:

1. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause.

If (a) at the time of commencing employment with such employing unit an individual is enrolled in an accredited academic program of study provided by an institution of higher education for students that have been awarded a baccalaureate degree, which academic program culminates in the awarding of a master's, doctoral, or professional degree; (b) the individual's employment with such employing unit commenced and ended during the period between spring and fall semesters of the academic program in which the individual is enrolled; and (c) the individual returned to such academic program following his separation from such employing unit, there shall be a rebuttable presumption that the individual left work voluntarily.

As used in this chapter, "good cause" shall not include (1) voluntarily leaving work with an employer to become self-employed or (2) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality, except where an individual leaves employment to accompany a spouse to the location of the spouse's new duty assignment if (A) the spouse is on active duty in the military or naval services of the United States; (B) the spouse's relocation to a new military-related assignment is pursuant to a permanent change of station order; (C) the location of the spouse's new duty assignment is not readily accessible from the individual's place of employment; and (D) except for members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person accompanying a military spouse as a person leaving work voluntarily without good cause. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.

2. a. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work.

b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

(1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such test was conducted at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such test shall have been performed, and a sample collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or shall have been a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the

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SB646

59 employer to be sanctioned or have its license or certification suspended by the Commonwealth. The
60 Commission may consider evidence of mitigating circumstances in determining whether misconduct
61 occurred.

62 (4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or
63 one or more unapproved absences following a written reprimand or warning relating to more than one
64 unapproved absence. The Commission may consider evidence of mitigating circumstances in determining
65 whether misconduct occurred.

66 (5) An employee's loss of or failure to renew a license or certification that is a requisite of the
67 position held by the employee, provided the employer is not at fault for the employee's loss of or failure
68 to renew the license or certification. The Commission may consider evidence of mitigating
69 circumstances in determining whether misconduct occurred.

70 *"Misconduct" does not include an employee's refusal to receive or receive in part any primary series*
71 *or booster shot of a vaccine for the prevention of COVID-19.*

72 3. a. If it is determined by the Commission that such individual has failed, without good cause, either
73 to apply for available, suitable work when so directed by the employment office or the Commission or
74 to accept suitable work when offered him. The disqualification shall commence with the week in which
75 such failure occurred, and shall continue for the period of unemployment next ensuing until he has
76 performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii)
77 for 240 hours, and subsequently becomes totally or partially separated from such employment.

78 b. In determining whether or not any work is suitable for an individual, the Commission shall
79 consider the degree of risk involved to his health, safety and morals, his physical fitness and prior
80 training, his experience, his length of unemployment and the accessibility of the available work from his
81 residence.

82 c. No work shall be deemed suitable and benefits shall not be denied under this title to any otherwise
83 eligible individual for refusing to accept new work under any of the following conditions:

84 (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

85 (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the
86 individual than those prevailing for similar work in the locality; or

87 (3) If as a condition of being employed the individual would be required to join a company union or
88 to resign from or refrain from joining any bona fide labor organization.

89 d. No individual shall be qualified for benefits during any week that such individual, in connection
90 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,
91 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition
92 of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized
93 standards by a laboratory accredited by the United States Department of Health and Human Services, or
94 the College of American Pathology, or the American Association for Clinical Chemistry, or the
95 equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in
96 accordance with the employer's bona fide drug policy. The disqualification shall commence with the
97 week in which such a test was conducted, and shall continue for the period of unemployment next
98 ensuing until he has performed services for an employer (i) during 30 days, whether or not such days
99 are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such
100 employment.

101 4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds
102 that such individual, within 36 calendar months immediately preceding such determination or decision,
103 has made a false statement or representation knowing it to be false, or has knowingly failed to disclose
104 a material fact, to obtain or increase any benefit or payment under this title, the unemployment
105 compensation of any other state, or any other program of the federal government which is administered
106 in any way under this title, either for himself or any other person. Overpayments that have been
107 fraudulently obtained and any penalty assessed against the individual pursuant to § 60.2-636 shall be
108 recoverable as provided in § 60.2-633.

109 5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his
110 release from prison or jail until he has performed services for an employer for (i) 30 days, whether or
111 not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated
112 from such employment.

113 6. If such separation arose as a condition of the individual's parole or release from a custodial or
114 penal institution and such individual was participating in the community corrections alternative program
115 pursuant to § 19.2-316.4.