WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2163

(By Delegate Campbell)

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Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation generally; and eliminating reductions in unemployment compensation for persons receiving benefits under Title II of the Social Security Act or similar payments under any act of Congress.

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 to read as follows:

ARTICLE 6. UNEMPLOYMENT COMPENSATION.

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

1 Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:
(1) For the week in which he or she left his or her most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

For the purpose of this subdivision (1), an individual shall not be deemed to have left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if such individual leaves his or her most recent work with an employer and if he or she in fact, within a fourteen-day calendar period, does return to employment with the last preceding employer with whom he or she was previously employed within the past year prior to his or her return to workday, and which last preceding employer, after having previously employed such individual for thirty working days or more, laid off such individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had such individual applied for such benefits. It is the intent of this paragraph to cause no disqualification for benefits for such an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual shall not be deemed to have left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if such individual was compelled to leave his or her work for his or her own health-related reasons and presents certification from a licensed physician that his or her work aggravated, worsened, or will worsen the individual’s health problem.

(2) For the week in which he or she was discharged from his or her most recent work for misconduct and the six weeks immediately following such week; or for the week in which he or she was discharged from his or her last thirty-day employing unit for misconduct and the six weeks immediately following
37 such week. Such disqualification shall carry a reduction in the
38 maximum benefit amount equal to six times the individual’s
39 weekly benefit. However, if the claimant returns to work in
40 covered employment for thirty days during his or her benefit
41 year, whether or not such days are consecutive, the maximum
42 benefit amount shall be increased by the amount of the decrease
43 imposed under the disqualification; except that:

44 If he or she were discharged from his or her most recent
45 work for one of the following reasons, or if he or she were
46 discharged from his or her last thirty days employing unit for
47 one of the following reasons: Misconduct consisting of willful
48 destruction of his or her employer’s property; assault upon the
49 person of his or her employer or any employee of his or her
50 employer; if such assault is committed at such individual’s
51 place of employment or in the course of employment; reporting
52 to work in an intoxicated condition, or being intoxicated while
53 at work; reporting to work under the influence of any controlled
54 substance, or being under the influence of any controlled
55 substance while at work; arson, theft, larceny, fraud or embez-
56 zlement in connection with his or her work; or any other gross
57 misconduct; he or she shall be and remain disqualified for
58 benefits until he or she has thereafter worked for at least thirty
59 days in covered employment: Provided, That for the purpose of
60 this subdivision the words “any other gross misconduct” shall
61 include, but not be limited to, any act or acts of misconduct
62 where the individual has received prior written warning that
63 termination of employment may result from such act or acts.

64 (3) For the week in which he or she failed without good
65 cause to apply for available, suitable work, accept suitable work
66 when offered, or return to his or her customary
67 self-employment when directed to do so by the commissioner,
68 and for the four weeks which immediately follow for such
69 additional period as any offer of suitable work shall continue
70 open for his or her acceptance. Such disqualification shall carry
a reduction in the maximum benefit amount equal to four times
the individual's weekly benefit amount.

(4) For a week in which his or her total or partial unemployment is due to a stoppage of work which exists because of
a labor dispute at the factory, establishment or other premises
at which he or she was last employed, unless the commissioner
is satisfied that he or she: (1) Was not participating, financing,
or directly interested in such dispute, and (2) did not belong to
a grade or class of workers who were participating, financing or
directly interested in the labor dispute which resulted in the
stoppage of work. No disqualification under this subdivision
shall be imposed if the employees are required to accept wages,
hours or conditions of employment substantially less favorable
than those prevailing for similar work in the locality, or if
employees are denied the right of collective bargaining under
generally prevailing conditions, or if an employer shuts down
his or her plant or operation or dismisses his or her employees
in order to force wage reduction, changes in hours or working
conditions.

For the purpose of this subdivision, if any stoppage of work
continues longer than four weeks after the termination of the
labor dispute which caused stoppage of work, there shall be a
rebuttable presumption that part of the stoppage of work which
exists after said period of four weeks after the termination of
said labor dispute did not exist because of said labor dispute;
and in such event the burden shall be upon the employer or
other interested party to show otherwise.

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

(a) Wages in lieu of notice;
(b) Compensation for temporary total disability under the workers’ compensation law of any state or under a similar law of the United States; or

c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

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

(8) (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): Provided, That any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act as provided by Public Law 94-566 which specify
other conditions or other effective date than stated herein for
the denial of benefits based on services performed by aliens and
which modifications are required to be implemented under state
law as a condition for full tax credit against the tax imposed by
the Federal Unemployment Tax Act shall be deemed applicable
under the provisions of this section;

(b) Any data or information required of individuals
applying for benefits to determine whether benefits are not
payable to them because of their alien status shall be uniformly
required from all applicants for benefits;

(c) In the case of an individual whose application for
benefits would otherwise be approved, no determination that
benefits to such individual are not payable because of his or her
alien status shall be made except upon a preponderance of the
evidence.

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

(10) For each week in which he or she is unemployed
because of his or her request, or that of his or her duly autho-
rized agent, for a vacation period at a specified time that would
leave the employer no other alternative but to suspend opera-
tions.

(11) For each week with respect to which he or she is
receiving or has received benefits under Title II of the Social
Security Act or similar payments under any act of Congress,
and/or remuneration in the form of an annuity, pension or other
retirement pay from a base period and/or chargeable employer
or from any trust or fund contributed to by a base period and/or chargeable employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of said benefits, payments and/or remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next lowest multiple of one dollar: Provided, however, That there shall be no disqualification if in the individual’s base period there are no wages which were paid by the base period and/or chargeable employer paying such remuneration, or by a fund into which the employer has paid during said base period: Provided further, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to such individual for such week shall not be reduced by any retirement benefits he or she is receiving or has received under Title II of the Social Security Act or similar payments under any act of Congress. Claimant may be required to certify as to whether or not he or she is receiving or has been receiving remuneration in the form of an annuity, pension or other retirement pay from a base period and/or chargeable employer or from a trust fund contributed to by a base period and/or chargeable employer.

(12) For each week in which and for fifty-two weeks thereafter, beginning with the date of the decision, if the commissioner finds such individual who within twenty-four calendar months immediately preceding such decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article: Provided, That disqualification under this subdivision shall not preclude prosecution under section seven, article ten of this chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ______ day of ______, 2005.

Governor