WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

House Bill No. 4007

(By Delegates Iaquinta, Longstreth, Fleischauer, Jones, Stephens, Walker and Azinger)

Passed March 9, 2012

To Take Effect Ninety Days From Passage
ENROLLED

H. B. 4007

(BY DELEGATES IAQUINTA, LONGSTRETH, FLEISCHAUER, JONES, STEPHENS, WALKER AND AZINGER)

[Passed March 9, 2012; to take 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 benefits for certain spouses of military personnel; providing that an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another is not disqualified for benefits; and providing that the account of the employer of the individual who leaves employment to accompany a spouse reassigned from one military assignment to another may not be charged for those benefits.

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. EMPLOYEE ELIGIBILITY; BENEFITS.

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

1 Upon the determination of the facts by the commissioner, an individual is 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, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if the 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 the individual for thirty working days or more, laid off the 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 the individual applied for benefits. It is the intent of this paragraph to cause no disqualification for benefits for an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if the individual was compelled to leave his or her work for his or her own health-related reasons and notifies the employer prior to leaving the job or within two business days after leaving the job or as soon as practicable and presents written certification from a licensed physician within thirty days of leaving the job 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 that 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 that week. The disqualification
carries a reduction in the maximum benefit amount equal to
six times the individual's weekly benefit. However, if the
claimant returns to work in covered employment for thirty
days during his or her benefit year, whether or not the days
are consecutive, the maximum benefit amount is increased by
the amount of the decrease imposed under the
disqualification; except that:

If he or she were discharged from his or her most recent
work for one of the following reasons, or if he or she were
discharged from his or her last thirty days employing unit for
one of the following reasons: Gross misconduct consisting
of willful destruction of his or her employer's property; assault upon the person of his or her employer or any
employee of his or her employer; if the assault is committed
at the individual's place of employment or in the course of
employment; reporting to work in an intoxicated condition,
or being intoxicated while at work; reporting to work under
the influence of any controlled substance, as defined in
chapter sixty-a of this code without a valid prescription, or
being under the influence of any controlled substance, as
defined in said chapter without a valid prescription, while at
work; adulterating or otherwise manipulating a sample or
specimen in order to thwart a drug or alcohol test lawfully
required of an employee; refusal to submit to random testing
for alcohol or illegal controlled substances for employees in
safety sensitive positions as defined in section two, article
one-d, chapter twenty-one of this code; arson, theft, larceny,
fraud or embezzlement in connection with his or her work; or
any other gross misconduct, he or she is disqualified for
benefits until he or she has thereafter worked for at least
thirty days in covered employment: Provided, That for the
purpose of this subdivision, the words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from the act or acts.

(3) For the week in which he or she failed without good cause to apply for available, suitable work, accept suitable work when offered, or return to his or her customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his or her acceptance. The disqualification carries 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 the 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 is 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 is a rebuttable presumption that part of the
stoppage of work which exists after a period of four weeks
after the termination of the labor dispute did not exist because
of the labor dispute; and in that event the burden is 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: Provided, That an individual who has
voluntarily quit employment to accompany a spouse serving
in active military service who has been reassigned from one
military assignment to another is not disqualified for benefits
pursuant to this subdivision: Provided, however, That the
account of the employer of an individual who leaves the
employment to accompany a spouse reassigned from one
military assignment to another may not be charged.

(7) Benefits may 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 the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the later of the seasons (or similar periods).

(8) (a) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or was permanently residing in the United States under color of law at the time the 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 in this subdivision 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 are 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 the individual are not payable because of his or her alien status may 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 that 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 individual 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 authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

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

(12) 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, or remuneration in the form of an annuity, pension or other retirement pay from a base period employer or chargeable employer or from any trust or fund contributed to by a base period employer or chargeable employer or any combination of the above, the weekly benefit amount payable to the individual for that week shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments or remuneration: Provided, That if the amount of benefits is not a multiple of $1, it shall be computed to the next lowest multiple of $1: Provided, however, That there is no disqualification if in the individual's base period there are no
wages which were paid by the base period employer or chargeable employer paying the remuneration, or by a fund into which the employer has paid during the base period: Provided further, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to the individual for that week may 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. A 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 employer or chargeable employer or from a trust fund contributed to by a base period employer or chargeable employer.

(13) For each week in which and for fifty-two weeks thereafter, beginning with the date of the decision, if the commissioner finds the individual who within twenty-four calendar months immediately preceding the 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 does not preclude prosecution under section seven, article ten of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 2nd day of April, 2012.

Governor
PRESENTED TO THE GOVERNOR

MARCH 9, 2012

Time: 11:10AM