

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 60.2-612 of the Code of Virginia, relating to unemployment insurance; benefit*  
 3 *eligibility conditions; lockout exception to labor dispute disqualification.*

4 [S 433]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 60.2-612 of the Code of Virginia is amended and reenacted as follows:**8 **§ 60.2-612. Benefit eligibility conditions.**9 A. An unemployed individual shall be eligible to receive benefits for any week only if the Commission  
 10 finds that:11 1. He has, in the highest two quarters of earnings within his base period, been paid wages in employment  
 12 for employers that are equal to not less than the lowest amount appearing in Column A of the "Benefit Table"  
 13 appearing in § 60.2-602 on the line which extends through Division C and on which in Column B of the  
 14 "Benefit Table" appears his weekly benefit amount. Such wages shall be earned in not less than two quarters.15 2. a. His total or partial unemployment is not due to a labor dispute in active progress or to shutdown or  
 16 start-up operations caused by such dispute which exists (i) at the factory, establishment, or other premises,  
 17 including a vessel, at which he is or was last employed, or (ii) at a factory, establishment or other premises,  
 18 including a vessel, either within or without this Commonwealth, which (a) is owned or operated by the same  
 19 employing unit which owns or operates the premises at which he is or was last employed and (b) supplies  
 20 materials or services necessary to the continued and usual operation of the premises at which he is or was last  
 21 employed. *For the purposes of this subdivision, a labor dispute does not include a lockout by an employer,*  
 22 *and an individual who otherwise qualifies for benefits under this section shall not be denied benefits due to a*  
 23 *lockout except for any week during which (1) the recognized or certified collective bargaining representative*  
 24 *of the locked-out employees refuses to meet under reasonable conditions with the employer to discuss the*  
 25 *issues giving rise to the lockout, (2) there is a final adjudication under the federal National Labor Relations*  
 26 *Act, 29 U.S.C. § 151 et seq., that during the period of the lockout the recognized or certified collective*  
 27 *bargaining representative of the locked-out employees has refused to bargain in good faith with the employer*  
 28 *over issues giving rise to the lockout, or (3) the lockout has resulted as a direct consequence of a violation of*  
 29 *the provisions of an existing collective bargaining agreement by the recognized or certified collective*  
 30 *bargaining representative of the locked-out employees. This subdivision shall not apply if it is shown to the*  
 31 *satisfaction of the Commission that:*32 ~~(1)~~ (A) He is not participating in or financing or directly interested in the labor dispute; and33 ~~(2)~~ (B) He does not belong to a grade or class of workers of which, immediately before the  
 34 commencement of the labor dispute, there were members employed at the premises, including a vessel, at  
 35 which the labor dispute occurs, any of whom are participating in or financing or directly interested in the  
 36 dispute.37 b. If separate branches of work which are commonly conducted as separate businesses at separate  
 38 premises are conducted in separate departments of the same premises, each such department shall, for the  
 39 purposes of this subdivision, be deemed to be a separate factory, establishment or other premises.  
 40 Membership in a union, or the payment of regular dues to a bona fide labor organization, however, shall not  
 41 alone constitute financing a labor dispute.42 3. He is not receiving, has not received or is not seeking unemployment benefits under an unemployment  
 43 compensation law of any other state or of the United States; however, if the appropriate agency of such other  
 44 state or of the United States finally determines that he is not entitled to such unemployment benefits, this  
 45 subdivision shall not apply.46 4. He is not on a bona fide paid vacation. If an individual is paid vacation pay for any week in an amount  
 47 less than the individual's weekly benefit amount his eligibility for benefits shall be computed under the  
 48 provisions of § 60.2-603.49 5. He has registered for work and thereafter has continued to report at an employment office in accordance  
 50 with such regulations as the Commission may prescribe. The Commission may, by regulation, waive or alter  
 51 either or both of the requirements of this subdivision for certain types of cases when it finds that compliance  
 52 with such requirements would be oppressive, or would be inconsistent with the purposes of this title.

53 6. He has made a claim for benefits in accordance with regulations the Commission may prescribe.

54 7. a. He is able to work, is available for work, and is actively seeking and unable to obtain suitable work.  
 55 Every claimant who is totally unemployed shall report to the Commission the names of employers contacted  
 56 each week in his effort to obtain work. This information may be subject to employer verification by the

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57 Commission through a program designed for that purpose. The Commission may determine that registration  
58 by a claimant with the Virginia State Job Service may constitute a valid employer contact and satisfy the  
59 search for work requirement of this subsection in labor market areas where job opportunities are limited. The  
60 Commission may determine that an individual, whose usual and customary means of soliciting work in his  
61 occupation is through contact with a single hiring hall which makes contacts with multiple employers on  
62 behalf of the claimant, meets the requirement that he be actively seeking and unable to obtain suitable work  
63 by contacting that hiring hall alone. In areas of high unemployment, as determined by the Commission, the  
64 Commission has the authority to adjust the requirement that he be actively seeking and unable to obtain  
65 suitable work.

66 b. An individual who leaves the normal labor market area of the individual for the major portion of any  
67 week is presumed to be unavailable for work within the meaning of this section. This presumption may be  
68 overcome if the individual establishes to the satisfaction of the Commission that the individual has conducted  
69 a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in  
70 which the individual spent the major portion of the week to which the presumption applies.

71 c. An individual whose type of work is such that it is performed by individuals working two or more shifts  
72 in a 24-hour period shall not be deemed unavailable for work if the individual is currently enrolled in one or  
73 more classes of education related to employment or is continuing in a certificate or degree program at an  
74 institution of higher education, provided that the enrollment would only limit the individual's availability for  
75 one shift and the individual is otherwise available to work any of the other shifts.

76 8. He has given notice of resignation to his employer and the employer subsequently made the termination  
77 of employment effective prior to the date of termination as given in the notice, but in no case shall  
78 unemployment compensation benefits awarded under this subdivision exceed two weeks; provided, that the  
79 claimant could not establish good cause for leaving work pursuant to § 60.2-618 and was not discharged for  
80 misconduct as provided in § 60.2-618.

81 9. Beginning January 6, 1991, he has served a waiting period of one week during which he was eligible  
82 for benefits under this section in all other respects and has not received benefits, except that only one waiting  
83 week shall be required of such individual within any benefit year. For claims filed effective November 28,  
84 1999, and after, this requirement shall be waived for any individual whose unemployment was caused by his  
85 employer terminating operations, closing its business or declaring bankruptcy without paying the final wages  
86 earned as required by § 40.1-29 of the Code of Virginia. Notwithstanding any other provision of this title, if  
87 an employer who terminates operations, closes its business or declares bankruptcy pays an individual his final  
88 wages after the period of time prescribed by § 40.1-29 of the Code of Virginia, such payment shall not be  
89 offset against the benefits the individual was otherwise entitled to receive and shall not, under any  
90 circumstances, cause such individual to be declared overpaid benefits.

91 10. He is not imprisoned or confined in jail.

92 11. He participates in reemployment services, such as job search assistance services, if he has been  
93 determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling  
94 system established by the Commission, unless the Commission determines that (i) such claimant has  
95 completed such services or (ii) there is good cause for such claimant's failure to participate in such services.

96 B. Prior to any individual receiving benefits under this chapter, the Commission shall conduct an  
97 incarceration check and an employment identification check to verify the status of the unemployed individual  
98 seeking a claim for benefits.