

1 **H. B. 2543**

2  
3 (By Delegates Iaquina, Fleischauer,  
4 Longstreth, Stephens, Walker and Azinger)

5 [Introduced January 18, 2011; referred to the  
6 Committee on Veterans' Affairs and Homeland Security then  
7 Finance.]

**Interim  
Bill**

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9  
10 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia,  
11 1931, as amended, relating to unemployment benefits for  
12 certain spouses of military personnel; providing that an  
13 individual who has voluntarily quit employment to accompany a  
14 spouse serving in active military service who has been  
15 reassigned from one military assignment to another shall not  
16 be disqualified for benefits; providing that the account of  
17 the employer of the individual who leaves employment to  
18 accompany a spouse reassigned from one military assignment to  
19 another shall not be charged.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §21A-6-3 of the Code of West Virginia, 1931, as amended,  
22 be amended and reenacted to read as follows:

23 **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

24 **§21A-6-3. Disqualification for benefits.**

1           Upon the determination of the facts by the commissioner, an  
2 individual shall be disqualified for benefits:

3           (1) For the week in which he or she left his or her most  
4 recent work voluntarily without good cause involving fault on the  
5 part of the employer and until the individual returns to covered  
6 employment and has been employed in covered employment at least  
7 thirty working days.

8           For the purpose of this subdivision, an individual shall not  
9 be deemed to have left his or her most recent work voluntarily  
10 without good cause involving fault on the part of the employer, if  
11 such individual leaves his or her most recent work with an employer  
12 and if he or she in fact, within a fourteen-day calendar period,  
13 does return to employment with the last preceding employer with  
14 whom he or she was previously employed within the past year prior  
15 to his or her return to workday, and which last preceding employer,  
16 after having previously employed such individual for thirty working  
17 days or more, laid off such individual because of lack of work,  
18 which layoff occasioned the payment of benefits under this chapter  
19 or could have occasioned the payment of benefits under this chapter  
20 had such individual applied for such benefits. It is the intent of  
21 this paragraph to cause no disqualification for benefits for such  
22 an individual who complies with the foregoing set of requirements  
23 and conditions. Further, for the purpose of this subdivision, an  
24 individual shall not be deemed to have left his or her most recent

1 work voluntarily without good cause involving fault on the part of  
2 the employer, if such individual was compelled to leave his or her  
3 work for his or her own health-related reasons and notifies the  
4 employer prior to leaving the job or within two business days after  
5 leaving the job or as soon as practicable and presents written  
6 certification from a licensed physician within thirty days of  
7 leaving the job that his or her work aggravated, worsened or will  
8 worsen the individual's health problem.

9       (2) For the week in which he or she was discharged from his  
10 or her most recent work for misconduct and the six weeks  
11 immediately following such week; or for the week in which he or she  
12 was discharged from his or her last thirty-day employing unit for  
13 misconduct and the six weeks immediately following such week. Such  
14 disqualification shall carry a reduction in the maximum benefit  
15 amount equal to six times the individual's weekly benefit.  
16 However, if the claimant returns to work in covered employment for  
17 thirty days during his or her benefit year, whether or not such  
18 days are consecutive, the maximum benefit amount shall be increased  
19 by the amount of the decrease imposed under the disqualification;  
20 except that:

21       If he or she were discharged from his or her most recent work  
22 for one of the following reasons, or if he or she were discharged  
23 from his or her last thirty days employing unit for one of the  
24 following reasons:     Gross misconduct consisting of willful

1 destruction of his or her employer's property; assault upon the  
2 person of his or her employer or any employee of his or her  
3 employer; if such assault is committed at such individual's place  
4 of employment or in the course of employment; reporting to work in  
5 an intoxicated condition, or being intoxicated while at work;  
6 reporting to work under the influence of any controlled substance,  
7 as defined in chapter sixty-a of this code without a valid  
8 prescription, or being under the influence of any controlled  
9 substance, as defined in said chapter without a valid prescription,  
10 while at work; adulterating or otherwise manipulating a sample or  
11 specimen in order to thwart a drug or alcohol test lawfully  
12 required of an employee; refusal to submit to random testing for  
13 alcohol or illegal controlled substances for employees in safety  
14 sensitive positions as defined in section two, article one-d,  
15 chapter twenty-one of this code; arson, theft, larceny, fraud or  
16 embezzlement in connection with his or her work; or any other gross  
17 misconduct, he or she shall be and remain disqualified for benefits  
18 until he or she has thereafter worked for at least thirty days in  
19 covered employment: *Provided*, That for the purpose of this  
20 subdivision, the words "any other gross misconduct" shall include,  
21 but not be limited to, any act or acts of misconduct where the  
22 individual has received prior written warning that termination of  
23 employment may result from such act or acts.

24 (3) For the week in which he or she failed without good cause

1 to apply for available, suitable work, accept suitable work when  
2 offered, or return to his or her customary self-employment when  
3 directed to do so by the commissioner, and for the four weeks which  
4 immediately follow for such additional period as any offer of  
5 suitable work shall continue open for his or her acceptance. Such  
6 disqualification shall carry a reduction in the maximum benefit  
7 amount equal to four times the individual's weekly benefit amount.

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

1 longer than four weeks after the termination of the labor dispute  
2 which caused stoppage of work, there shall be a rebuttable  
3 presumption that part of the stoppage of work which exists after a  
4 period of four weeks after the termination of the labor dispute did  
5 not exist because of the labor dispute; and in that event the  
6 burden shall be upon the employer or other interested party to show  
7 otherwise.

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

10 (a) Wages in lieu of notice;

11 (b) Compensation for temporary total disability under the  
12 workers' compensation law of any state or under a similar law of  
13 the United States; or

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

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

21 Provided, That an individual who has voluntarily quit employment to  
22 accompany a spouse serving in active military service who has been  
23 reassigned from one military assignment to another shall not be  
24 disqualified for benefits pursuant to this subdivision: *Provided,*

1 however, That the account of the employer of an individual who  
2 leaves the employment to accompany a spouse reassigned from one  
3 military assignment to another shall not be charged.

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

13 (8) (a) Benefits shall not be paid on the basis of services  
14 performed by an alien unless such alien is an individual who was  
15 lawfully admitted for permanent residence at the time such services  
16 were performed, was lawfully present for purposes of performing  
17 such services or was permanently residing in the United States  
18 under color of law at the time such services were performed  
19 (including an alien who is lawfully present in the United States as  
20 a result of the application of the provisions of Section 203(a) (7)  
21 or Section 212(d) (5) of the Immigration and Nationality Act):  
22 *Provided*, That any modifications to the provisions of Section  
23 3304(a) (14) of the federal Unemployment Tax Act as provided by  
24 Public Law 94-566 which specify other conditions or other effective

1 date than stated herein for the denial of benefits based on  
2 services performed by aliens and which modifications are required  
3 to be implemented under state law as a condition for full tax  
4 credit against the tax imposed by the federal Unemployment Tax Act  
5 shall be deemed applicable under the provisions of this section;

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

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

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

22 (10) For each week in which he or she is unemployed because  
23 of his or her request, or that of his or her duly authorized agent,  
24 for a vacation period at a specified time that would leave the

1 employer no other alternative but to suspend operations.

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

8       (12) For each week with respect to which he or she is  
9 receiving or has received benefits under Title II of the Social  
10 Security Act or similar payments under any Act of Congress, or  
11 remuneration in the form of an annuity, pension or other retirement  
12 pay from a base period employer or chargeable employer or from any  
13 trust or fund contributed to by a base period employer or  
14 chargeable employer or any combination of the above, the weekly  
15 benefit amount payable to such individual for such week shall be  
16 reduced (but not below zero) by the prorated weekly amount of said  
17 benefits, payments or remuneration: *Provided*, That if such amount  
18 of benefits is not a multiple of one-dollar, it shall be computed  
19 to the next lowest multiple of one-dollar: *Provided, however*, That  
20 there shall be no disqualification if in the individual's base  
21 period there are no wages which were paid by the base period  
22 employer or chargeable employer paying such remuneration, or by a  
23 fund into which the employer has paid during said base period:  
24 *Provided further*, That notwithstanding any other provision of this

1 subdivision to the contrary, the weekly benefit amount payable to  
2 such individual for such week shall not be reduced by any  
3 retirement benefits he or she is receiving or has received under  
4 Title II of the Social Security Act or similar payments under any  
5 Act of Congress. Claimant may be required to certify as to whether  
6 or not he or she is receiving or has been receiving remuneration in  
7 the form of an annuity, pension or other retirement pay from a base  
8 period employer or chargeable employer or from a trust fund  
9 contributed to by a base period employer or chargeable employer.

10 (13) For each week in which and for fifty-two weeks  
11 thereafter, beginning with the date of the decision, if the  
12 commissioner finds such individual who within twenty-four calendar  
13 months immediately preceding such decision, has made a false  
14 statement or representation knowing it to be false or knowingly  
15 fails to disclose a material fact, to obtain or increase any  
16 benefit or payment under this article: *Provided, That*  
17 disqualification under this subdivision shall not preclude  
18 prosecution under section seven, article ten of this chapter.

NOTE: The purpose of this bill is to provide 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 shall not be disqualified for benefits. The bill also provides that the account of the employer of the individual shall not be charged.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

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This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislative Committee.