

# **H. B. 4007**

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(BY DELEGATES IAQUINTA, LONGSTRETH, FLEISCHAUER,  
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[Introduced January 12, 2012; referred to the  
Committee on Veterans' Affairs and Homeland Security then  
Finance.]

A BILL to amend and reenact 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,

2   an individual ~~shall be~~ is 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

5   on the part of the employer and until the individual returns to

6   covered employment and has been employed in covered

7   employment at least thirty working days.

8       For the purpose of this subdivision, an individual ~~shall~~

9   has not ~~been deemed to have~~ left his or her most recent work

10   voluntarily without good cause involving fault on the part of

11   the employer, if ~~such~~ the individual leaves his or her most

12   recent work with an employer and if he or she in fact, within

13   a fourteen-day calendar period, does return to employment

14 with the last preceding employer with whom he or she was  
15 previously employed within the past year prior to his or her  
16 return to workday, and which last preceding employer, after  
17 having previously employed ~~such~~ the individual for thirty  
18 working days or more, laid off ~~such~~ the individual because of  
19 lack of work, which layoff occasioned the payment of  
20 benefits under this chapter or could have occasioned the  
21 payment of benefits under this chapter had ~~such~~ the  
22 individual applied for ~~such~~ benefits. It is the intent of this  
23 paragraph to cause no disqualification for benefits for ~~such~~  
24 an individual who complies with the foregoing set of  
25 requirements and conditions. Further, for the purpose of this  
26 subdivision, an individual ~~shall has~~ not be deemed to have  
27 left his or her most recent work voluntarily without good  
28 cause involving fault on the part of the employer, if ~~such~~ the  
29 individual was compelled to leave his or her work for his or  
30 her own health-related reasons and notifies the employer  
31 prior to leaving the job or within two business days after

32 leaving the job or as soon as practicable and presents written  
33 certification from a licensed physician within thirty days of  
34 leaving the job that his or her work aggravated, worsened or  
35 will worsen the individual's health problem.

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

50        If he or she were discharged from his or her most recent  
51        work for one of the following reasons, or if he or she were  
52        discharged from his or her last thirty days employing unit for  
53        one of the following reasons: Gross misconduct consisting  
54        of willful destruction of his or her employer's property;  
55        assault upon the person of his or her employer or any  
56        employee of his or her employer; if ~~such the~~ assault is  
57        committed at ~~such the~~ individual's place of employment or in  
58        the course of employment; reporting to work in an  
59        intoxicated condition, or being intoxicated while at work;  
60        reporting to work under the influence of any controlled  
61        substance, as defined in chapter sixty-a of this code without  
62        a valid prescription, or being under the influence of any  
63        controlled substance, as defined in said chapter without a  
64        valid prescription, while at work; adulterating or otherwise  
65        manipulating a sample or specimen in order to thwart a drug  
66        or alcohol test lawfully required of an employee; refusal to  
67        submit to random testing for alcohol or illegal controlled

68 substances for employees in safety sensitive positions as  
69 defined in section two, article one-d, chapter twenty-one of  
70 this code; arson, theft, larceny, fraud or embezzlement in  
71 connection with his or her work; or any other gross  
72 misconduct, he or she ~~shall be and remain~~ is disqualified for  
73 benefits until he or she has thereafter worked for at least  
74 thirty days in covered employment: *Provided*, That for the  
75 purpose of this subdivision, the words "any other gross  
76 misconduct" ~~shall include~~ includes, but is not ~~be~~ limited to,  
77 any act or acts of misconduct where the individual has  
78 received prior written warning that termination of  
79 employment may result from ~~such~~ the act or acts.

80 (3) For the week in which he or she failed without good  
81 cause to apply for available, suitable work, accept suitable work  
82 when offered, or return to his or her customary self-employment  
83 when directed to do so by the commissioner, and for the four  
84 weeks which immediately follow for such additional period as  
85 any offer of suitable work shall continue open for his or her

86 acceptance. ~~Such~~ The disqualification ~~shall carry~~ carries a  
87 reduction in the maximum benefit amount equal to four times  
88 the individual's weekly benefit amount.

89 (4) For a week in which his or her total or partial  
90 unemployment is due to a stoppage of work which exists  
91 because of a labor dispute at the factory, establishment or  
92 other premises at which he or she was last employed, unless  
93 the commissioner is satisfied that he or she: (1) Was not  
94 participating, financing or directly interested in ~~such~~ the  
95 dispute; and (2) did not belong to a grade or class of workers  
96 who were participating, financing or directly interested in the  
97 labor dispute which resulted in the stoppage of work. No  
98 disqualification under this subdivision ~~shall be~~ is imposed if  
99 the employees are required to accept wages, hours or  
100 conditions of employment substantially less favorable than  
101 those prevailing for similar work in the locality, or if  
102 employees are denied the right of collective bargaining under  
103 generally prevailing conditions, or if an employer shuts down

104 his or her plant or operation or dismisses his or her  
105 employees in order to force wage reduction, changes in hours  
106 or working conditions. For the purpose of this subdivision if  
107 any stoppage of work continues longer than four weeks after  
108 the termination of the labor dispute which caused stoppage  
109 of work, there ~~shall be~~ is a rebuttable presumption that part  
110 of the stoppage of work which exists after a period of four  
111 weeks after the termination of the labor dispute did not exist  
112 because of the labor dispute; and in that event the burden  
113 ~~shall be~~ is upon the employer or other interested party to  
114 show otherwise.

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

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

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

123       (6) For the week in which an individual has voluntarily  
124       quit employment to marry or to perform any marital, parental  
125       or family duty, or to attend to his or her personal business or  
126       affairs and until the individual returns to covered  
127       employment and has been employed in covered employment  
128       at least thirty working days: Provided, That an individual  
129       who has voluntarily quit employment to accompany a spouse  
130       serving in active military service who has been reassigned  
131       from one military assignment to another is not disqualified  
132       for benefits pursuant to this subdivision: Provided however,  
133       That the account of the employer of an individual who leaves  
134       the employment to accompany a spouse reassigned from one  
135       military assignment to another may not be charged.

136       (7) Benefits ~~shall~~ may not be paid to any individual on  
137       the basis of any services, substantially all of which consist of  
138       participating in sports or athletic events or training or

139 preparing to so participate, for any week which commences  
140 during the period between two successive sport seasons (or  
141 similar periods) if ~~such the~~ individual performed ~~such the~~  
142 services in the first of ~~such the~~ seasons (or similar periods)  
143 and there is a reasonable assurance that ~~such the~~ individual  
144 will perform ~~such the~~ services in the later of ~~such the~~ seasons  
145 (or similar periods).

146 (8) (a) Benefits ~~shall~~ may not be paid on the basis of  
147 services performed by an alien unless ~~such the~~ alien is an  
148 individual who was lawfully admitted for permanent  
149 residence at the time ~~such the~~ services were performed, was  
150 lawfully present for purposes of performing ~~such the~~ services  
151 or was permanently residing in the United States under color  
152 of law at the time ~~such the~~ services were performed  
153 (including an alien who is lawfully present in the United  
154 States as a result of the application of the provisions of  
155 Section 203(a)(7) or Section 212(d)(5) of the Immigration  
156 and Nationality Act): *Provided*, That any modifications to  
157 the provisions of Section 3304(a)(14) of the federal

158    Unemployment Tax Act as provided by Public Law 94-566  
159    which specify other conditions or other effective date than  
160    stated ~~herein~~ in this subdivision for the denial of benefits  
161    based on services performed by aliens and which  
162    modifications are required to be implemented under state law  
163    as a condition for full tax credit against the tax imposed by  
164    the federal Unemployment Tax Act ~~shall be deemed~~ are  
165    applicable under the provisions of this section.

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

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

175            (9) For each week in which an individual is unemployed  
176    because, having voluntarily left employment to attend a

177 school, college, university or other educational institution, he  
178 or she is attending ~~such that~~ school, college, university or  
179 other educational institution, or is awaiting entrance thereto  
180 or is awaiting the starting of a new term or session thereof,  
181 and until the individual returns to covered employment.

182 (10) For each week in which he or she is unemployed  
183 because of his or her request, or that of his or her duly  
184 authorized agent, for a vacation period at a specified time  
185 that would leave the employer no other alternative but to  
186 suspend operations.

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

194 (12) For each week with respect to which he or she is  
195 receiving or has received benefits under Title II of the Social

196 Security Act or similar payments under any Act of Congress,  
197 or remuneration in the form of an annuity, pension or other  
198 retirement pay from a base period employer or chargeable  
199 employer or from any trust or fund contributed to by a base  
200 period employer or chargeable employer or any combination  
201 of the above, the weekly benefit amount payable to ~~such the~~  
202 individual for ~~such that~~ week shall be reduced (but not below  
203 zero) by the prorated weekly amount of ~~said those~~ benefits,  
204 payments or remuneration: *Provided*, That if ~~such the~~  
205 amount of benefits is not a multiple of \$1, it shall be  
206 computed to the next lowest multiple of \$1: *Provided*,  
207 *however*, That there ~~shall be is~~ no disqualification if in the  
208 individual's base period there are no wages which were paid  
209 by the base period employer or chargeable employer paying  
210 ~~such the~~ remuneration, or by a fund into which the employer  
211 has paid during ~~said the~~ base period: *Provided further*, That  
212 notwithstanding any other provision of this subdivision to the  
213 contrary, the weekly benefit amount payable to ~~such the~~  
214 individual for ~~such that~~ week ~~shall may~~ not be reduced by

215 any retirement benefits he or she is receiving or has received  
216 under Title II of the Social Security Act or similar payments  
217 under any Act of Congress. A claimant may be required to  
218 certify as to whether or not he or she is receiving or has been  
219 receiving remuneration in the form of an annuity, pension or  
220 other retirement pay from a base period employer or  
221 chargeable employer or from a trust fund contributed to by a  
222 base period employer or chargeable employer.

223 (13) For each week in which and for fifty-two weeks  
224 thereafter, beginning with the date of the decision, if the  
225 commissioner finds ~~such~~ the individual who within twenty-  
226 four calendar months immediately preceding ~~such~~ the  
227 decision, has made a false statement or representation  
228 knowing it to be false or knowingly fails to disclose a  
229 material fact, to obtain or increase any benefit or payment  
230 under this article: *Provided*, That disqualification under this  
231 subdivision ~~shall~~ does not preclude prosecution under section  
232 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 is not disqualified for unemployment benefits. The bill also provides that the account of the employer of the individual may not be charged.

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

This bill was recommended for introduction and passage during the 2012 Regular Session of the Legislature by the Select Committee on Veterans' Affairs.