

1 **Senate Bill No. 105**

2 (By Senators Carmichael and Karnes)

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4 [Introduced January 14, 2015; referred to the Committee on Labor; and then to the Committee on

5

the Judiciary.]

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10 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating

11 to disqualification for unemployment benefits; and providing that an individual shall be

12 disqualified for benefits for any week, or portion of a week, in which he or she did not work

13 as a result of a strike.

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

15 That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted

16 to read as follows:

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

18 **§21A-6-3. Disqualification for benefits.**

19 Upon the determination of the facts by the commissioner, an individual shall be disqualified

20 for benefits:

21 (1) For the week in which he or she left his or her most recent work voluntarily without good

1 cause involving fault on the part of the employer and until the individual returns to covered
2 employment and has been employed in covered employment at least thirty working days.

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

13 Further, for the purpose of this subdivision, an individual has not left his or her most recent work
14 voluntarily without good cause involving fault on the part of the employer, if the individual was
15 compelled to leave his or her work for his or her own health-related reasons and notifies the
16 employer prior to leaving the job or within two business days after leaving the job or as soon as
17 practicable and presents written certification from a licensed physician within thirty days of leaving
18 the job that his or her work aggravated, worsened or will worsen the individual's health problem.

19 (2) For the week in which he or she was discharged from his or her most recent work for
20 misconduct and the six weeks immediately following that week; or for the week in which he or she
21 was discharged from his or her last thirty-day employing unit for misconduct and the six weeks

1 immediately following that week. The disqualification carries a reduction in the maximum benefit
2 amount equal to six times the individual's weekly benefit. However, if the claimant returns to work
3 in covered employment for thirty days during his or her benefit year, whether or not the days are
4 consecutive, the maximum benefit amount is increased by the amount of the decrease imposed under
5 the disqualification; except that:

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

1 received prior written warning that termination of employment may result from the act or acts.

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

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

1 the burden is upon the employer or other interested party to show otherwise.

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

3 (a) Wages in lieu of notice;

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

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

8 (6) For the week in which an individual has voluntarily quit employment to marry or to
9 perform any marital, parental or family duty, or to attend to his or her personal business or affairs
10 and until the individual returns to covered employment and has been employed in covered
11 employment at least thirty working days: *Provided*, That an individual who has voluntarily quit
12 employment to accompany a spouse serving in active military service who has been reassigned from
13 one military assignment to another is not disqualified for benefits pursuant to this subdivision:
14 *Provided, however*, That the account of the employer of an individual who leaves the employment
15 to accompany a spouse reassigned from one military assignment to another may not be charged.

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

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

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

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

19 (9) For each week in which an individual is unemployed because, having voluntarily left
20 employment to attend a school, college, university or other educational institution, he or she is
21 attending that school, college, university or other educational institution, or is awaiting entrance

1 thereto or is awaiting the starting of a new term or session thereof, and until the individual returns
2 to covered employment.

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

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

10 (12) For each week with respect to which he or she is receiving or has received benefits under
11 Title II of the Social Security Act or similar payments under any Act of Congress, or remuneration
12 in the form of an annuity, pension or other retirement pay from a base period employer or chargeable
13 employer or from any trust or fund contributed to by a base period employer or chargeable employer
14 or any combination of the above, the weekly benefit amount payable to the individual for that week
15 shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments or
16 remuneration: *Provided*, That if the amount of benefits is not a multiple of \$1, it shall be computed
17 to the next lowest multiple of \$1: *Provided, however*, That there is no disqualification if in the
18 individual's base period there are no wages which were paid by the base period employer or
19 chargeable employer paying the remuneration, or by a fund into which the employer has paid during
20 the base period: *Provided further*, That notwithstanding any other provision of this subdivision to
21 the contrary, the weekly benefit amount payable to the individual for that week may not be reduced

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

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

12 (14) For any week or portion thereof in which he or she did not work as a result of a strike.

NOTE: The purpose of this bill is clarify that an individual is disqualified from unemployment benefits for any week or portion thereof in which he or she did not work as a result of a strike.

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