

1 HB85
2 122517-2
3 By Representative Wren
4 RFD: Military and Veterans Affairs
5 First Read: 01-MAR-11

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Section 25-4-78, Code of Alabama 1975,
9 relating to unemployment benefits, to allow spouses of active
10 duty members of the military who receive change of station
11 orders, activation orders, or unit deployment orders to
12 receive unemployment benefits if they voluntarily quit working
13 in order to relocate.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 25-4-78, Code of Alabama 1975, is
16 amended as follows:

17 "§25-4-78.

18 An individual shall be disqualified for total or
19 partial unemployment:

20 (1) LABOR DISPUTE IN PLACE OF EMPLOYMENT. For any
21 week in which his total or partial unemployment is directly
22 due to a labor dispute still in active progress in the
23 establishment in which he is or was last employed. For the
24 purposes of this section only, the term "labor dispute"
25 includes any controversy concerning terms, tenure, or
26 conditions of employment, or concerning the association or
27 representation of persons in negotiating, fixing, maintaining,

1 changing, or seeking to arrange terms or conditions of
2 employment, regardless of whether the disputants stand in the
3 proximate relation of employer and employee. This definition
4 shall not relate to a dispute between an individual worker and
5 his employer.

6 (2) VOLUNTARILY QUITTING WORK. If he has left his
7 most recent bona fide work voluntarily without good cause
8 connected with such work.

9 a.1. However, he shall not be disqualified if he was
10 forced to leave work because he was sick or disabled, notified
11 his employer of the fact as soon as it was reasonably
12 practicable so to do, and returned to that employer and
13 offered himself for work as soon as he was again able to work;
14 provided, however, this exception shall not apply if the
15 employer had an established leave-of-absence policy covering
16 sickness or disability and:

17 (i) The individual fails to comply with same as soon
18 as it is reasonably practicable so to do; or

19 (ii) Upon the expiration of a leave of absence shall
20 fail to return to said employer and offer himself for work, if
21 he shall then be able to work, or if he is not then able to
22 work, he fails to so notify his employer of that fact and
23 request an extension of his said leave of absence as soon as
24 it is reasonably practicable so to do.

25 2. In case of doubt that an individual was sick or
26 disabled, or as to the duration of any such sickness or
27 disability, the director may, or if the employer requests it,

1 the director shall require a doctor's certificate to establish
2 the fact or facts in doubt.

3 3. An established leave-of-absence policy shall be
4 any leave-of-absence policy covering sickness and disability
5 communicated to the employee by the customary means used by
6 the employer for communicating with his employees.

7 4. Nothing herein shall be construed or interpreted
8 as authorizing the payment of benefits to any person during,
9 or for, unemployment due to sickness or disability or during
10 any period in which he is on a leave of absence granted in
11 accordance with an established leave-of-absence policy, the
12 duration of which leave was set in accordance with his request
13 or in accordance with a collective bargaining agreement;
14 except, that if such leave of absence is on account of
15 pregnancy and extends beyond the tenth week following
16 termination of such pregnancy, the individual shall not be
17 denied benefits under the provisions of this subdivision (2)
18 beyond such tenth week if she has given the employer three
19 weeks notice of her desire to return to work, is then able to
20 work and has not refused reinstatement to a job which under
21 the provisions of subdivision (5) of this section would be
22 deemed suitable for her.

23 b. When an individual is disqualified under this
24 subdivision (2):

25 1. He shall not be entitled to benefits for the week
26 in which the disqualifying event occurs or for any week
27 thereafter until:

1 (i) He has reentered insured employment or
2 employment of the nature described in subdivisions (5), (6),
3 (7), (8), (9), (10), or (18) of subsection (b) of Section
4 25-4-10; and

5 (ii) For which employment he has earned wages equal
6 to at least 10 times his weekly benefit amount for the benefit
7 year in which such disqualification is assessed; and

8 (iii) He has been separated from such employment
9 under nondisqualifying conditions.

10 2. The total amount of benefits to which he may
11 otherwise be entitled as determined in accordance with
12 Sections 25-4-74 and 25-4-75 shall be reduced by an amount
13 equal to not less than six nor more than 12 times his weekly
14 benefit amount.

15 3. For the purpose of the experience rating
16 provisions of Section 25-4-54, no portion of the benefits
17 payable to him, based upon wages paid to him for the period of
18 employment ending with the separation to which the
19 disqualification applies, shall be charged to the employer's
20 experience rating account. If the individual has been
21 separated from employment other than his most recent bona fide
22 work under conditions which would have been disqualifying
23 under this subdivision (2) had the separation been from his
24 most recent bona fide work and the employer answers a notice
25 of payment within 15 days after it is mailed to him detailing
26 the facts in connection with the separation, then no portion
27 of any benefits paid to him based upon wages for the period of

1 employment ending in such separation shall be charged to the
2 employer's experience rating account.

3 c. An individual shall not be disqualified if he
4 left his employment and immediately returned to work with his
5 regular employer or to employment in which he had prior
6 existing statutory or contractual seniority or recall rights.
7 When this exception is applied, any benefits paid to such
8 individual based upon wages paid for that period of employment
9 immediately preceding the separation to which the exception is
10 applied, which have not been heretofore charged to the
11 employer's experience rating account, shall not be charged to
12 the account of such employer.

13 d. For separation occurring on or after October 1,
14 2011, an individual shall not be disqualified if he or she
15 left his or her employment to relocate as a result of his or
16 her active duty military-connected spouse's permanent change
17 of station orders, activation orders, or unit deployment
18 orders. When this exception is applied, any benefits paid to
19 such individual based upon wages paid for that period of
20 employment immediately preceding the separation to which the
21 exception is applied, which have not been heretofore charged
22 to the employer's experience rating account, shall not be
23 charged to the account of such employer.

24 ~~d.~~ e. For the purposes of this subdivision (2) and
25 subdivision (3) of this section, the director in determining
26 the "most recent bona fide work" shall only consider
27 employment of the nature described in subsection (a) of

1 Section 25-4-10. The director shall also consider the duration
2 of the most recent job or jobs, the intent of the individual
3 and his employer as to the permanence of such work and whether
4 separation from the immediately preceding employment was under
5 conditions which would be disqualifying in the event such
6 immediately preceding employment should be determined to be
7 the most recent bona fide work.

8 (3) DISCHARGE FOR MISCONDUCT.

9 a. If he was discharged or removed from his work for
10 a dishonest or criminal act committed in connection with his
11 work or for sabotage or an act endangering the safety of
12 others or for the use of illegal drugs after previous warning
13 or for the refusal to submit to or cooperate with a blood or
14 urine test after previous warning. Disqualification under this
15 paragraph may be applied to separations prior to separation
16 from the most recent bona fide work only if the employer has
17 filed a notice with the director alleging that the separation
18 was under conditions described in this paragraph in such
19 manner and within such time as the director may prescribe.

20 (i) A confirmed positive drug test that is conducted
21 and evaluated according to standards set forth for the conduct
22 and evaluation of such tests by the U.S. Department of
23 Transportation in 49 C.F.R. Part 40 or standards shown by the
24 employer to be otherwise reliable shall be a conclusive
25 presumption of impairment by illegal drugs. No unemployment
26 compensation benefits shall be allowed to an employee having a
27 confirmed positive drug test if the employee had been warned

1 that such a positive test could result in dismissal pursuant
2 to a reasonable drug policy. A drug policy shall be deemed
3 reasonable if the employer shows that all employees of the
4 employer regardless of position or classification, are subject
5 to testing under the policy, and in those instances in which
6 the employer offers as the basis for disqualification from
7 unemployment compensation benefits the results obtained
8 pursuant to additional testing imposed on some but not all
9 classifications, if the employer can also offer some rational
10 basis for conducting such additional testing. Further, no
11 unemployment compensation benefits shall be allowed if the
12 employee refuses to submit to or cooperate with a blood or
13 urine test as set forth above, or if the employee knowingly
14 alters or adulterates the blood or urine specimen.

15 (ii) For purposes of paragraph a. and item (i) of
16 paragraph a. of this subdivision, "warning" shall mean that
17 the employee has been advised in writing of the provisions of
18 the employer's drug policy and that either testing positive
19 pursuant to the standards referenced above or the refusal to
20 submit to or cooperate with a blood or urine test as set out
21 in the above referenced standards could result in termination
22 of employment. This written notification as herein described
23 shall constitute a "warning" as used in paragraph a. and item
24 (i) of paragraph a. of this subdivision.

25 (iii) To the extent that the issue is a positive
26 drug test or the refusal to submit to or cooperate with a
27 blood or urine test, or if the employee knowingly alters or

1 adulterates the blood or urine sample, as distinguished from
2 some other aspect of the employer's drug policy, this
3 disqualification under paragraph a. and item (i) of paragraph
4 a. shall be the only disqualification to apply, in connection
5 with an individual's separation from employment. Other
6 non-separation disqualifications may apply.

7 When an individual is disqualified under this
8 paragraph:

9 1. He shall not be entitled to benefits for the week
10 in which the disqualifying event occurs or for any week
11 thereafter until he has reentered insured employment or
12 employment of the nature described in subdivisions (5), (6),
13 (7), (8), (9), (10), or (18) of subsection (b) of Section
14 25-4-10, has earned wages equal at least to 10 times his
15 weekly benefit amount and has been separated from such
16 employment for a nondisqualifying reason.

17 2. He shall not thereafter be entitled to any
18 benefits under this chapter on account of wages paid to him
19 for the period of employment by the employer by whom he was
20 employed when the disqualifying event occurred.

21 3. For the purposes of the experience rating
22 provisions of Section 25-4-54:

23 (i) No portion of any benefits based upon wages paid
24 to the individual for the period of employment by the employer
25 by whom he was employed when the disqualifying event occurred
26 shall be charged to the employer's experience rating account.

1 (ii) In the case of a separation prior to the
2 separation from the most recent bona fide work, if the only
3 reason disqualification under this paragraph a. was not
4 assessed was the failure of the employer to properly file a
5 timely separation report with the director and the employer
6 files such a report within 15 days after the mailing of a
7 notice of payment, then no portion of any benefits paid based
8 upon the wages paid for the period of employment ending in
9 such prior separation shall be charged to the employer's
10 experience rating account.

11 b. If he was discharged from his most recent bona
12 fide work for actual or threatened misconduct committed in
13 connection with his work (other than acts mentioned in
14 paragraph a. of this subdivision (3)) repeated after previous
15 warning to the individual. When an individual is disqualified
16 under this paragraph, or exempt from disqualification for a
17 separation under such conditions prior to his most recent bona
18 fide work, the effect shall be the same as provided in
19 paragraph b. of subdivision (2) of this section for
20 disqualification or exemption from disqualification
21 respectively.

22 c. If he was discharged from his most recent bona
23 fide work for misconduct connected with his work [other than
24 acts mentioned in paragraphs a. and b. of this subdivision
25 (3)]:

26 1. He shall be disqualified from receipt of benefits
27 for the week in which he was discharged and for not less than

1 the three nor more than the seven next following weeks, as
2 determined by the director in each case according to the
3 seriousness of the conduct.

4 2. The total amount of benefits to which he may
5 otherwise be entitled as determined in accordance with
6 Sections 25-4-74 and 25-4-75 shall be reduced by an amount
7 equal to the product of the number of weeks for which he shall
8 be disqualified multiplied by his weekly benefit amount.

9 3. Only one-half of the benefits paid to him based
10 upon wages for that period of employment immediately preceding
11 the separation to which the disqualification applies shall be
12 charged to the employer for the purposes of the experience
13 rating provisions of Section 25-4-54. If the individual has
14 been separated from employment, other than his most recent
15 bona fide work, under conditions which would have been
16 disqualifying under paragraph c. of this subdivision (3), had
17 the separation been from his most recent bona fide work and
18 the employer answers a notice of payment within 15 days after
19 it is mailed to him detailing the facts in connection with the
20 separation, then only one-half of the benefits paid to him for
21 that period of employment immediately preceding the separation
22 shall be charged to the employer for the purposes of the
23 experience rating provisions of Section 25-4-54.

24 d. If he has been suspended as a disciplinary
25 measure connected with his work, or for misconduct connected
26 with his work, he shall be disqualified from benefits for the
27 week or weeks (not to exceed four weeks) in which, or for

1 which, he is so suspended and the total amount of benefits to
2 which he may otherwise be entitled shall be reduced in the
3 same manner and to the same extent as provided in subparagraph
4 2 of paragraph c. of this subdivision (3).

5 (4) REVOCATION OR SUSPENSION OF REQUIRED LICENSE,
6 ETC. For the week in which he has become unemployed because a
7 license, certificate, permit, bond, surety, or insurability
8 which is necessary for the performance of such employment and
9 which he is responsible to maintain or supply has been
10 revoked, suspended or otherwise become lost to him for a cause
11 other than one which would fall within the meaning of
12 subdivision (3) of this section, but one which was within his
13 power to control, guard against, or prevent, and for each week
14 thereafter until:

15 a. Said license, certificate, permit, bond, or
16 surety, or insurability, has been restored to him and he has
17 reapplied to his employer for employment; or

18 b. He has reentered insured employment or employment
19 of the nature described in subdivisions (5), (6), (7), (8),
20 (9), (10), or (18) of subsection (b) of Section 25-4-10,
21 whichever is the earlier.

22 c. Nothing in this subdivision shall be construed as
23 basis for disqualification of an individual who is without
24 fault and who has made a reasonable effort to obtain his or
25 her initial license, certificate, permit, bond, surety, or
26 insurability required for the performance of assigned duties.

1 (5) FAILURE TO ACCEPT AVAILABLE SUITABLE WORK, ETC.

2 If he fails, without good cause, either to apply for or to
3 accept available suitable work or to return to his customary
4 self-employment when so directed by the director or when he is
5 notified of suitable work or it is offered him through a state
6 employment office or the United States Employment Service, or
7 directly or by written notice or offer to any such employment
8 office or employment service by an employer by whom the
9 individual was formerly employed. Such disqualification shall
10 be for a period of not less than one nor more than 10 weeks
11 from the date of said failure. This disqualification shall not
12 apply unless the individual has an established benefit year,
13 or is seeking to establish one or is seeking extended benefits
14 at the time he fails without good cause, to do any of the acts
15 set out in this subdivision (5).

16 a. In determining whether or not any work is
17 suitable for an individual, the director shall consider:

18 1. The degree of risk involved to his health,
19 safety, and morals, his physical fitness and prior training,

20 2. His experience and prior earnings,

21 3. His length of unemployment,

22 4. His prospects for securing local work in his
23 customary occupation,

24 5. The distance of the available work from his
25 residence; provided, that no work or employment shall be
26 deemed unsuitable because of its distance from the
27 individual's residence, if such work or employment is in the

1 same or substantially the same locality as was his last
2 previous regular place of employment and if the employee left
3 such voluntarily without good cause connected with such
4 employment.

5 b. Notwithstanding any other provisions of this
6 chapter, no work shall be deemed suitable and benefits shall
7 not be denied under this chapter to any otherwise eligible
8 individual for refusing to accept new work under any of the
9 following conditions:

10 1. If the position offered is vacant due directly to
11 a strike, lockout, or other labor dispute;

12 2. If the wages, hours, or other conditions of the
13 work offered are substantially less favorable to the
14 individual than those prevailing for similar work in the
15 locality; or

16 3. If as a condition of being employed the
17 individual would be required to join a company union, or to
18 resign from or refrain from joining any bona fide labor
19 organization.

20 c. Notwithstanding any other provisions of this
21 section, benefits shall not be denied an individual, by reason
22 of the application of the provisions of this subdivision (5),
23 with respect to any week in which he is in training with the
24 approval of the director as described in subdivision (a) (3) of
25 Section 25-4-77.

26 (6) RECEIPT OF BACK PAY AWARD, ETC. For any week
27 with respect to which he is receiving or has received

1 remuneration in the form of a back pay award. Notwithstanding
2 the provisions of Section 25-4-91 any benefits previously paid
3 for weeks of unemployment with respect to which back pay
4 awards are made shall constitute an overpayment and such
5 amounts shall be deducted from the award by the employer prior
6 to payment to the employee and shall be transmitted promptly
7 to the director by the employer for application against the
8 overpayment and credit to the claimant's maximum benefit
9 amount and prompt deposit into the fund; provided, however,
10 the removal of any charges made against the employer as a
11 result of such previously paid benefits shall be applied to
12 the calendar year and the calendar quarter in which the
13 overpayment is received by the director and no attempt shall
14 be made to relate such a credit to the period to which the
15 award applies. Any amount of overpayment deducted by the
16 employer shall be subject to the same procedures for
17 collection as is provided for contributions by Section
18 25-4-134 of this chapter.

19 (7) RECEIPT OF OR APPLICATION FOR UNEMPLOYMENT
20 COMPENSATION FROM ANOTHER STATE, ETC. For any week with
21 respect to which, or a part of which, he has received or is
22 seeking unemployment benefits under an unemployment
23 compensation law of any other state or of the United States;
24 provided, that if the appropriate agency of such other state
25 or of the United States finally determines that he is not
26 entitled to such unemployment benefits this disqualification
27 shall not apply.

1 (8) RECEIPT OF PENSION PAYMENT. For any week with
2 respect to which, or a part of which, an individual has
3 received or has, except for the determination of an exact or
4 specific amount, been determined eligible to receive (during a
5 period for which benefits are being claimed) governmental or
6 other pension, retirement or retired pay, annuity, or similar
7 periodic payment which is based on the previous work of the
8 individual; except, that

9 a. For weeks of unemployment which begin prior to
10 April 26, 1982, as was prescribed by this subsection prior to
11 such date, and

12 b. For weeks of unemployment which begin on or after
13 April 26, 1982, the amount of any benefits payable to an
14 individual for any such week which begins in a period with
15 respect to which the disqualifying provisions of this
16 subdivision apply, shall be reduced (but not below zero) by an
17 amount equal to the amount of such pension, retirement or
18 retired pay, annuity, or other payment, which is reasonably
19 attributable to such week, provided, however, such reduction
20 required hereby shall apply to any pension, retirement or
21 retired pay, annuity, or other similar payment only if:

22 1. Such payment is made under a plan maintained (or
23 contributed to) by a base period employer, and

24 2. In the case of such a payment not made under the
25 Social Security Act or the Railroad Retirement Act of 1974 (or
26 the corresponding provisions of prior law), services performed
27 for such employer by the individual after the beginning of his

1 base period (or remuneration for such services) affect
2 eligibility for or increase the amount of, such payment.

3 c. The other provisions of this subdivision to the
4 contrary notwithstanding, beginning with the weeks ending
5 October 7, 1995, the amount of any pension, retirement or
6 retired pay, annuity, or other similar periodic payment under
7 the Social Security Act or the Railroad Retirement Act shall
8 not result in a reduction of benefits under this subdivision.

9 d. If in accordance with this subdivision (8) any
10 individual is awarded pension payments retroactively covering
11 the same period for which the individual received benefits,
12 the retroactive payments shall constitute cause for
13 disqualification and any benefits paid during such period
14 shall be recovered.

15 (9) RECEIPT OF OR APPLICATION FOR WORKERS'
16 COMPENSATION. For any week with respect to which, or a part of
17 which, he has received or is seeking compensation for
18 temporary disability under any workers' compensation law;
19 provided, that if it is finally determined he is not entitled
20 to such compensation, this disqualification shall not apply;
21 and provided further, that if such compensation is less than
22 the benefits which would otherwise be due under this chapter,
23 he shall be entitled to receive for such week, if otherwise
24 eligible, benefits reduced by the amount of such payment.

25 (10) EMPLOYMENT BY PUBLIC WORKS AGENCY, ETC. For any
26 week that such individual is engaged or employed by the Works
27 Progress Administration, the National Youth Administration or

1 any federal or state unit, agency or instrumentality in charge
2 of public works, assistance through public employment or work
3 relief.

4 (11) SELF-EMPLOYMENT. For any week in which he is
5 self-employed and each week thereafter until he shall
6 establish that he is no longer self-employed.

7 (12) RECEIPT OF, OR APPLICATION FOR, TRAINING
8 ALLOWANCE, ETC. For any week with respect to which, or a part
9 of which, an individual who is enrolled in a course of
10 training with the approval of the director, within the meaning
11 of subdivision (a) (3) of Section 25-4-77, has applied for, or
12 is entitled to receive, any wage or subsistence or training
13 allowance or other form of remuneration, other than
14 reimbursement for travel expenses, for a course of training
15 under any public or private training program; provided, that
16 if it is finally determined that he is not entitled to such
17 remuneration, this disqualification shall not apply. If the
18 remuneration, the receipt of which is disqualifying under this
19 subdivision (12), is less than the weekly benefits which he
20 would otherwise be due under this chapter he shall be entitled
21 to receive, if otherwise eligible, weekly benefits reduced by
22 the amount of such remuneration. It is further provided that
23 receipt of training allowances under the Trade Readjustment
24 Act shall not be cause for disqualification under this
25 subdivision.

26 (13) PARTICIPATION IN PROFESSIONAL SPORTS. For any
27 week which commences during the period between two successive

1 sport seasons (or similar periods) to any individual for which
2 benefits claimed are on the basis of any services,
3 substantially all of which consist of participating in sports
4 or athletic events or training or preparing to so participate,
5 if such individual performed such services in the first of
6 such seasons (or similar periods) and there is a reasonable
7 assurance that such individual will perform such services in
8 the later of such seasons (or similar periods).

9 (14) ALIENS.

10 a. For any week for which benefits claimed are on
11 the basis of services performed by an alien unless:

12 1. Such alien is an individual who was lawfully
13 admitted for permanent residence at the time such services
14 were performed, and was lawfully present for purposes of
15 performing such services; or,

16 2. Such alien was permanently residing in the United
17 States under color of law at the time such services were
18 performed (including an alien who is lawfully present in the
19 United States as a result of the application of the provisions
20 of Section 203(a)(7) or Section 212(d)(5) of the Immigration
21 and Nationality Act); or,

22 3. Such alien was lawfully admitted for temporary
23 residence as provided for under the provisions of Section
24 245A(a) of the Immigration Reform and Control Act of 1986 (PL
25 99-603).

26 b. Any data or information required of individuals
27 applying for benefits to determine whether benefits are not

1 payable to them because of their alien status shall be
2 uniformly required from all applicants for benefits.

3 c. In the case of an individual whose application
4 for benefits would otherwise be approved, no determination
5 that benefits to such individual are not payable because of
6 his alien status shall be made except upon a preponderance of
7 the evidence.

8 Section 2. This bill shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Military and
Veterans' Affairs..... 01-MAR-11

Read for the second time and placed
on the calendar 1 amendment 09-MAR-11

Read for the third time and passed
as amended..... 05-MAY-11

Yeas 93, Nays 0, Abstains 0

Greg Pappas
Clerk