

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

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8 SYNOPSIS: Under existing law, persons who voluntarily
9 quit working are not eligible for unemployment
10 benefits.

11 This bill would allow individuals who
12 voluntarily quit working in order to relocate as a
13 result of his or her active duty military-connected
14 spouse's permanent change of station orders,
15 activation orders, or unit deployment orders to
16 receive unemployment benefits.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To amend Section 25-4-78, Code of Alabama 1975,
23 relating to unemployment benefits, to allow spouses of active
24 duty members of the military who receive change of station
25 orders, activation orders, or unit deployment orders to
26 receive unemployment benefits if they voluntarily quit working
27 in order to relocate.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 "§25-4-78.

5 An individual shall be disqualified for total or
6 partial unemployment:

7 (1) LABOR DISPUTE IN PLACE OF EMPLOYMENT. For any
8 week in which his total or partial unemployment is directly
9 due to a labor dispute still in active progress in the
10 establishment in which he is or was last employed. For the
11 purposes of this section only, the term "labor dispute"
12 includes any controversy concerning terms, tenure, or
13 conditions of employment, or concerning the association or
14 representation of persons in negotiating, fixing, maintaining,
15 changing, or seeking to arrange terms or conditions of
16 employment, regardless of whether the disputants stand in the
17 proximate relation of employer and employee. This definition
18 shall not relate to a dispute between an individual worker and
19 his employer.

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

23 a.1. However, he shall not be disqualified if he was
24 forced to leave work because he was sick or disabled, notified
25 his employer of the fact as soon as it was reasonably
26 practicable so to do, and returned to that employer and
27 offered himself for work as soon as he was again able to work;

1 provided, however, this exception shall not apply if the
2 employer had an established leave-of-absence policy covering
3 sickness or disability and:

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

6 (ii) Upon the expiration of a leave of absence shall
7 fail to return to said employer and offer himself for work, if
8 he shall then be able to work, or if he is not then able to
9 work, he fails to so notify his employer of that fact and
10 request an extension of his said leave of absence as soon as
11 it is reasonably practicable so to do.

12 2. In case of doubt that an individual was sick or
13 disabled, or as to the duration of any such sickness or
14 disability, the director may, or if the employer requests it,
15 the director shall require a doctor's certificate to establish
16 the fact or facts in doubt.

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

21 4. Nothing herein shall be construed or interpreted
22 as authorizing the payment of benefits to any person during,
23 or for, unemployment due to sickness or disability or during
24 any period in which he is on a leave of absence granted in
25 accordance with an established leave-of-absence policy, the
26 duration of which leave was set in accordance with his request
27 or in accordance with a collective bargaining agreement;

1 except, that if such leave of absence is on account of
2 pregnancy and extends beyond the tenth week following
3 termination of such pregnancy, the individual shall not be
4 denied benefits under the provisions of this subdivision (2)
5 beyond such tenth week if she has given the employer three
6 weeks notice of her desire to return to work, is then able to
7 work and has not refused reinstatement to a job which under
8 the provisions of subdivision (5) of this section would be
9 deemed suitable for her.

10 b. When an individual is disqualified under this
11 subdivision (2):

12 1. He shall not be entitled to benefits for the week
13 in which the disqualifying event occurs or for any week
14 thereafter until:

15 (i) He has reentered insured employment or
16 employment of the nature described in subdivisions (5), (6),
17 (7), (8), (9), (10), or (18) of subsection (b) of Section
18 25-4-10; and

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

22 (iii) He has been separated from such employment
23 under nondisqualifying conditions.

24 2. The total amount of benefits to which he may
25 otherwise be entitled as determined in accordance with
26 Sections 25-4-74 and 25-4-75 shall be reduced by an amount

1 equal to not less than six nor more than 12 times his weekly
2 benefit amount.

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

18 c. An individual shall not be disqualified if he
19 left his employment and immediately returned to work with his
20 regular employer or to employment in which he had prior
21 existing statutory or contractual seniority or recall rights.
22 When this exception is applied, any benefits paid to such
23 individual based upon wages paid for that period of employment
24 immediately preceding the separation to which the exception is
25 applied, which have not been heretofore charged to the
26 employer's experience rating account, shall not be charged to
27 the account of such employer.

1 d. An individual shall not be disqualified if he or
2 she left his or her employment to relocate as a result of his
3 or her active duty military-connected spouse's permanent
4 change of station orders, activation orders, or unit
5 deployment orders. When this exception is applied, any
6 benefits paid to such individual based upon wages paid for
7 that period of employment immediately preceding the separation
8 to which the exception is applied, which have not been
9 heretofore charged to the employer's experience rating
10 account, shall not be charged to the account of such employer.

11 ~~d.~~ e. For the purposes of this subdivision (2) and
12 subdivision (3) of this section, the director in determining
13 the "most recent bona fide work" shall only consider
14 employment of the nature described in subsection (a) of
15 Section 25-4-10. The director shall also consider the duration
16 of the most recent job or jobs, the intent of the individual
17 and his employer as to the permanence of such work and whether
18 separation from the immediately preceding employment was under
19 conditions which would be disqualifying in the event such
20 immediately preceding employment should be determined to be
21 the most recent bona fide work.

22 (3) DISCHARGE FOR MISCONDUCT.

23 a. If he was discharged or removed from his work for
24 a dishonest or criminal act committed in connection with his
25 work or for sabotage or an act endangering the safety of
26 others or for the use of illegal drugs after previous warning
27 or for the refusal to submit to or cooperate with a blood or

1 urine test after previous warning. Disqualification under this
2 paragraph may be applied to separations prior to separation
3 from the most recent bona fide work only if the employer has
4 filed a notice with the director alleging that the separation
5 was under conditions described in this paragraph in such
6 manner and within such time as the director may prescribe.

7 (i) A confirmed positive drug test that is conducted
8 and evaluated according to standards set forth for the conduct
9 and evaluation of such tests by the U.S. Department of
10 Transportation in 49 C.F.R. Part 40 or standards shown by the
11 employer to be otherwise reliable shall be a conclusive
12 presumption of impairment by illegal drugs. No unemployment
13 compensation benefits shall be allowed to an employee having a
14 confirmed positive drug test if the employee had been warned
15 that such a positive test could result in dismissal pursuant
16 to a reasonable drug policy. A drug policy shall be deemed
17 reasonable if the employer shows that all employees of the
18 employer regardless of position or classification, are subject
19 to testing under the policy, and in those instances in which
20 the employer offers as the basis for disqualification from
21 unemployment compensation benefits the results obtained
22 pursuant to additional testing imposed on some but not all
23 classifications, if the employer can also offer some rational
24 basis for conducting such additional testing. Further, no
25 unemployment compensation benefits shall be allowed if the
26 employee refuses to submit to or cooperate with a blood or

1 urine test as set forth above, or if the employee knowingly
2 alters or adulterates the blood or urine specimen.

3 (ii) For purposes of paragraph a. and item (i) of
4 paragraph a. of this subdivision, "warning" shall mean that
5 the employee has been advised in writing of the provisions of
6 the employer's drug policy and that either testing positive
7 pursuant to the standards referenced above or the refusal to
8 submit to or cooperate with a blood or urine test as set out
9 in the above referenced standards could result in termination
10 of employment. This written notification as herein described
11 shall constitute a "warning" as used in paragraph a. and item
12 (i) of paragraph a. of this subdivision.

13 (iii) To the extent that the issue is a positive
14 drug test or the refusal to submit to or cooperate with a
15 blood or urine test, or if the employee knowingly alters or
16 adulterates the blood or urine sample, as distinguished from
17 some other aspect of the employer's drug policy, this
18 disqualification under paragraph a. and item (i) of paragraph
19 a. shall be the only disqualification to apply, in connection
20 with an individual's separation from employment. Other
21 non-separation disqualifications may apply.

22 When an individual is disqualified under this
23 paragraph:

24 1. He shall not be entitled to benefits for the week
25 in which the disqualifying event occurs or for any week
26 thereafter until he has reentered insured employment or
27 employment of the nature described in subdivisions (5), (6),

1 (7), (8), (9), (10), or (18) of subsection (b) of Section
2 25-4-10, has earned wages equal at least to 10 times his
3 weekly benefit amount and has been separated from such
4 employment for a nondisqualifying reason.

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

9 3. For the purposes of the experience rating
10 provisions of Section 25-4-54:

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

15 (ii) In the case of a separation prior to the
16 separation from the most recent bona fide work, if the only
17 reason disqualification under this paragraph a. was not
18 assessed was the failure of the employer to properly file a
19 timely separation report with the director and the employer
20 files such a report within 15 days after the mailing of a
21 notice of payment, then no portion of any benefits paid based
22 upon the wages paid for the period of employment ending in
23 such prior separation shall be charged to the employer's
24 experience rating account.

25 b. If he was discharged from his most recent bona
26 fide work for actual or threatened misconduct committed in
27 connection with his work (other than acts mentioned in

1 paragraph a. of this subdivision (3)) repeated after previous
2 warning to the individual. When an individual is disqualified
3 under this paragraph, or exempt from disqualification for a
4 separation under such conditions prior to his most recent bona
5 fide work, the effect shall be the same as provided in
6 paragraph b. of subdivision (2) of this section for
7 disqualification or exemption from disqualification
8 respectively.

9 c. If he was discharged from his most recent bona
10 fide work for misconduct connected with his work [other than
11 acts mentioned in paragraphs a. and b. of this subdivision
12 (3)]:

13 1. He shall be disqualified from receipt of benefits
14 for the week in which he was discharged and for not less than
15 the three nor more than the seven next following weeks, as
16 determined by the director in each case according to the
17 seriousness of the conduct.

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

23 3. Only one-half of the benefits paid to him based
24 upon wages for that period of employment immediately preceding
25 the separation to which the disqualification applies shall be
26 charged to the employer for the purposes of the experience
27 rating provisions of Section 25-4-54. If the individual has

1 been separated from employment, other than his most recent
2 bona fide work, under conditions which would have been
3 disqualifying under paragraph c. of this subdivision (3), had
4 the separation been from his most recent bona fide work and
5 the employer answers a notice of payment within 15 days after
6 it is mailed to him detailing the facts in connection with the
7 separation, then only one-half of the benefits paid to him for
8 that period of employment immediately preceding the separation
9 shall be charged to the employer for the purposes of the
10 experience rating provisions of Section 25-4-54.

11 d. If he has been suspended as a disciplinary
12 measure connected with his work, or for misconduct connected
13 with his work, he shall be disqualified from benefits for the
14 week or weeks (not to exceed four weeks) in which, or for
15 which, he is so suspended and the total amount of benefits to
16 which he may otherwise be entitled shall be reduced in the
17 same manner and to the same extent as provided in subparagraph
18 2 of paragraph c. of this subdivision (3).

19 (4) REVOCATION OR SUSPENSION OF REQUIRED LICENSE,
20 ETC. For the week in which he has become unemployed because a
21 license, certificate, permit, bond, surety, or insurability
22 which is necessary for the performance of such employment and
23 which he is responsible to maintain or supply has been
24 revoked, suspended or otherwise become lost to him for a cause
25 other than one which would fall within the meaning of
26 subdivision (3) of this section, but one which was within his

1 power to control, guard against, or prevent, and for each week
2 thereafter until:

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

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

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

15 (5) FAILURE TO ACCEPT AVAILABLE SUITABLE WORK, ETC.
16 If he fails, without good cause, either to apply for or to
17 accept available suitable work or to return to his customary
18 self-employment when so directed by the director or when he is
19 notified of suitable work or it is offered him through a state
20 employment office or the United States Employment Service, or
21 directly or by written notice or offer to any such employment
22 office or employment service by an employer by whom the
23 individual was formerly employed. Such disqualification shall
24 be for a period of not less than one nor more than 10 weeks
25 from the date of said failure. This disqualification shall not
26 apply unless the individual has an established benefit year,
27 or is seeking to establish one or is seeking extended benefits

1 at the time he fails without good cause, to do any of the acts
2 set out in this subdivision (5).

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

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

7 2. His experience and prior earnings,

8 3. His length of unemployment,

9 4. His prospects for securing local work in his
10 customary occupation,

11 5. The distance of the available work from his
12 residence; provided, that no work or employment shall be
13 deemed unsuitable because of its distance from the
14 individual's residence, if such work or employment is in the
15 same or substantially the same locality as was his last
16 previous regular place of employment and if the employee left
17 such voluntarily without good cause connected with such
18 employment.

19 b. Notwithstanding any other provisions of this
20 chapter, no work shall be deemed suitable and benefits shall
21 not be denied under this chapter to any otherwise eligible
22 individual for refusing to accept new work under any of the
23 following conditions:

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

26 2. If the wages, hours, or other conditions of the
27 work offered are substantially less favorable to the

1 individual than those prevailing for similar work in the
2 locality; or

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

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

13 (6) RECEIPT OF BACK PAY AWARD, ETC. For any week
14 with respect to which he is receiving or has received
15 remuneration in the form of a back pay award. Notwithstanding
16 the provisions of Section 25-4-91 any benefits previously paid
17 for weeks of unemployment with respect to which back pay
18 awards are made shall constitute an overpayment and such
19 amounts shall be deducted from the award by the employer prior
20 to payment to the employee and shall be transmitted promptly
21 to the director by the employer for application against the
22 overpayment and credit to the claimant's maximum benefit
23 amount and prompt deposit into the fund; provided, however,
24 the removal of any charges made against the employer as a
25 result of such previously paid benefits shall be applied to
26 the calendar year and the calendar quarter in which the
27 overpayment is received by the director and no attempt shall

1 be made to relate such a credit to the period to which the
2 award applies. Any amount of overpayment deducted by the
3 employer shall be subject to the same procedures for
4 collection as is provided for contributions by Section
5 25-4-134 of this chapter.

6 (7) RECEIPT OF OR APPLICATION FOR UNEMPLOYMENT
7 COMPENSATION FROM ANOTHER STATE, ETC. For any week with
8 respect to which, or a part of which, he has received or is
9 seeking unemployment benefits under an unemployment
10 compensation law of any other state or of the United States;
11 provided, that if the appropriate agency of such other state
12 or of the United States finally determines that he is not
13 entitled to such unemployment benefits this disqualification
14 shall not apply.

15 (8) RECEIPT OF PENSION PAYMENT. For any week with
16 respect to which, or a part of which, an individual has
17 received or has, except for the determination of an exact or
18 specific amount, been determined eligible to receive (during a
19 period for which benefits are being claimed) governmental or
20 other pension, retirement or retired pay, annuity, or similar
21 periodic payment which is based on the previous work of the
22 individual; except, that

23 a. For weeks of unemployment which begin prior to
24 April 26, 1982, as was prescribed by this subsection prior to
25 such date, and

26 b. For weeks of unemployment which begin on or after
27 April 26, 1982, the amount of any benefits payable to an

1 individual for any such week which begins in a period with
2 respect to which the disqualifying provisions of this
3 subdivision apply, shall be reduced (but not below zero) by an
4 amount equal to the amount of such pension, retirement or
5 retired pay, annuity, or other payment, which is reasonably
6 attributable to such week, provided, however, such reduction
7 required hereby shall apply to any pension, retirement or
8 retired pay, annuity, or other similar payment only if:

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

11 2. In the case of such a payment not made under the
12 Social Security Act or the Railroad Retirement Act of 1974 (or
13 the corresponding provisions of prior law), services performed
14 for such employer by the individual after the beginning of his
15 base period (or remuneration for such services) affect
16 eligibility for or increase the amount of, such payment.

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

23 d. If in accordance with this subdivision (8) any
24 individual is awarded pension payments retroactively covering
25 the same period for which the individual received benefits,
26 the retroactive payments shall constitute cause for

1 disqualification and any benefits paid during such period
2 shall be recovered.

3 (9) RECEIPT OF OR APPLICATION FOR WORKERS'
4 COMPENSATION. For any week with respect to which, or a part of
5 which, he has received or is seeking compensation for
6 temporary disability under any workers' compensation law;
7 provided, that if it is finally determined he is not entitled
8 to such compensation, this disqualification shall not apply;
9 and provided further, that if such compensation is less than
10 the benefits which would otherwise be due under this chapter,
11 he shall be entitled to receive for such week, if otherwise
12 eligible, benefits reduced by the amount of such payment.

13 (10) EMPLOYMENT BY PUBLIC WORKS AGENCY, ETC. For any
14 week that such individual is engaged or employed by the Works
15 Progress Administration, the National Youth Administration or
16 any federal or state unit, agency or instrumentality in charge
17 of public works, assistance through public employment or work
18 relief.

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

22 (12) RECEIPT OF, OR APPLICATION FOR, TRAINING
23 ALLOWANCE, ETC. For any week with respect to which, or a part
24 of which, an individual who is enrolled in a course of
25 training with the approval of the director, within the meaning
26 of subdivision (a) (3) of Section 25-4-77, has applied for, or
27 is entitled to receive, any wage or subsistence or training

1 allowance or other form of remuneration, other than
2 reimbursement for travel expenses, for a course of training
3 under any public or private training program; provided, that
4 if it is finally determined that he is not entitled to such
5 remuneration, this disqualification shall not apply. If the
6 remuneration, the receipt of which is disqualifying under this
7 subdivision (12), is less than the weekly benefits which he
8 would otherwise be due under this chapter he shall be entitled
9 to receive, if otherwise eligible, weekly benefits reduced by
10 the amount of such remuneration. It is further provided that
11 receipt of training allowances under the Trade Readjustment
12 Act shall not be cause for disqualification under this
13 subdivision.

14 (13) PARTICIPATION IN PROFESSIONAL SPORTS. For any
15 week which commences during the period between two successive
16 sport seasons (or similar periods) to any individual for which
17 benefits claimed are on the basis of any services,
18 substantially all of which consist of participating in sports
19 or athletic events or training or preparing to so participate,
20 if such individual performed such services in the first of
21 such seasons (or similar periods) and there is a reasonable
22 assurance that such individual will perform such services in
23 the later of such seasons (or similar periods).

24 (14) ALIENS.

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

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

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

11 3. Such alien was lawfully admitted for temporary
12 residence as provided for under the provisions of Section
13 245A(a) of the Immigration Reform and Control Act of 1986 (PL
14 99-603).

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

19 c. In the case of an individual whose application
20 for benefits would otherwise be approved, no determination
21 that benefits to such individual are not payable because of
22 his alien status shall be made except upon a preponderance of
23 the evidence.

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