

1 HB121
2 133446-2
3 By Representative Wren
4 RFD: Military and Veterans Affairs
5 First Read: 07-FEB-12
6 PFD: 02/02/2012

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§25-4-78.

"An individual shall be disqualified for total or partial unemployment:

"(1) LABOR DISPUTE IN PLACE OF EMPLOYMENT. For any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed. For the purposes of this section only, the term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or 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
10 was forced to leave work because he was sick or disabled,
11 notified 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
18 soon as it is reasonably practicable so to do; or

19 "(ii) Upon the expiration of a leave of absence
20 shall fail to return to said employer and offer himself for
21 work, if he shall then be able to work, or if he is not then
22 able to work, he fails to so notify his employer of that fact
23 and request an extension of his said leave of absence as soon
24 as 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
26 week 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 the
14 effective date of the act adding this amendatory language, an
15 individual shall not be disqualified if he or she left his or
16 her employment to permanently relocate as a result of his or
17 her active duty military-connected spouse's permanent change
18 of station orders, activation orders, or unit deployment
19 orders. When this exception is applied, any benefits paid to
20 the individual based upon wages paid for that period of
21 employment immediately preceding the separation to which the
22 exception is applied, which have not been heretofore charged
23 to the employer's experience rating account, shall not be
24 charged to the account of the employer.

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

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

9 "(3) DISCHARGE FOR MISCONDUCT.

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

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

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

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

1 "(iii) To the extent that the issue is a positive
2 drug test or the refusal to submit to or cooperate with a
3 blood or urine test, or if the employee knowingly alters or
4 adulterates the blood or urine sample, as distinguished from
5 some other aspect of the employer's drug policy, this
6 disqualification under paragraph a. and item (i) of paragraph
7 a. shall be the only disqualification to apply, in connection
8 with an individual's separation from employment. Other
9 non-separation disqualifications may apply.

10 "When an individual is disqualified under this
11 paragraph:

12 "1. He shall not be entitled to benefits for the
13 week in which the disqualifying event occurs or for any week
14 thereafter until he has reentered insured employment or
15 employment of the nature described in subdivisions (5), (6),
16 (7), (8), (9), (10), or (18) of subsection (b) of Section
17 25-4-10, has earned wages equal at least to 10 times his
18 weekly benefit amount and has been separated from such
19 employment for a nondisqualifying reason.

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

24 "3. For the purposes of the experience rating
25 provisions of Section 25-4-54:

26 "(i) No portion of any benefits based upon wages
27 paid to the individual for the period of employment by the

1 employer by whom he was employed when the disqualifying event
2 occurred shall be charged to the employer's experience rating
3 account.

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

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

25 "c. If he was discharged from his most recent bona
26 fide work for misconduct connected with his work [other than

1 acts mentioned in paragraphs a. and b. of this subdivision
2 (3)]:

3 "1. He shall be disqualified from receipt of
4 benefits for the week in which he was discharged and for not
5 less than the three nor more than the seven next following
6 weeks, as determined by the director in each case according to
7 the seriousness of the conduct.

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

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

1 "d. If he has been suspended as a disciplinary
2 measure connected with his work, or for misconduct connected
3 with his work, he shall be disqualified from benefits for the
4 week or weeks (not to exceed four weeks) in which, or for
5 which, he is so suspended and the total amount of benefits to
6 which he may otherwise be entitled shall be reduced in the
7 same manner and to the same extent as provided in subparagraph
8 2 of paragraph c. of this subdivision (3).

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

19 "a. Said license, certificate, permit, bond, or
20 surety, or insurability, has been restored to him and he has
21 reapplied to his employer for employment; or

22 "b. He has reentered insured employment or
23 employment of the nature described in subdivisions (5), (6),
24 (7), (8), (9), (10), or (18) of subsection (b) of Section
25 25-4-10, whichever is the earlier.

26 "c. Nothing in this subdivision shall be construed
27 as basis for disqualification of an individual who is without

1 fault and who has made a reasonable effort to obtain his or
2 her initial license, certificate, permit, bond, surety, or
3 insurability required for the performance of assigned duties.

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

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

21 "1. The degree of risk involved to his health,
22 safety, and morals, his physical fitness and prior training,

23 "2. His experience and prior earnings,

24 "3. His length of unemployment,

25 "4. His prospects for securing local work in his
26 customary occupation,

1 "5. The distance of the available work from his
2 residence; provided, that no work or employment shall be
3 deemed unsuitable because of its distance from the
4 individual's residence, if such work or employment is in the
5 same or substantially the same locality as was his last
6 previous regular place of employment and if the employee left
7 such voluntarily without good cause connected with such
8 employment.

9 "b. Notwithstanding any other provisions of this
10 chapter, no work shall be deemed suitable and benefits shall
11 not be denied under this chapter to any otherwise eligible
12 individual for refusing to accept new work under any of the
13 following conditions:

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

16 "2. If the wages, hours, or other conditions of the
17 work offered are substantially less favorable to the
18 individual than those prevailing for similar work in the
19 locality; or

20 "3. If as a condition of being employed the
21 individual would be required to join a company union, or to
22 resign from or refrain from joining any bona fide labor
23 organization.

24 "c. Notwithstanding any other provisions of this
25 section, benefits shall not be denied an individual, by reason
26 of the application of the provisions of this subdivision (5),
27 with respect to any week in which he is in training with the

1 approval of the director as described in subdivision (a) (3) of
2 Section 25-4-77.

3 "(6) RECEIPT OF BACK PAY AWARD, ETC. For any week
4 with respect to which he is receiving or has received
5 remuneration in the form of a back pay award. Notwithstanding
6 the provisions of Section 25-4-91 any benefits previously paid
7 for weeks of unemployment with respect to which back pay
8 awards are made shall constitute an overpayment and such
9 amounts shall be deducted from the award by the employer prior
10 to payment to the employee and shall be transmitted promptly
11 to the director by the employer for application against the
12 overpayment and credit to the claimant's maximum benefit
13 amount and prompt deposit into the fund; provided, however,
14 the removal of any charges made against the employer as a
15 result of such previously paid benefits shall be applied to
16 the calendar year and the calendar quarter in which the
17 overpayment is received by the director and no attempt shall
18 be made to relate such a credit to the period to which the
19 award applies. Any amount of overpayment deducted by the
20 employer shall be subject to the same procedures for
21 collection as is provided for contributions by Section
22 25-4-134 of this chapter.

23 "(7) RECEIPT OF OR APPLICATION FOR UNEMPLOYMENT
24 COMPENSATION FROM ANOTHER STATE, ETC. For any week with
25 respect to which, or a part of which, he has received or is
26 seeking unemployment benefits under an unemployment
27 compensation law of any other state or of the United States;

1 provided, that if the appropriate agency of such other state
2 or of the United States finally determines that he is not
3 entitled to such unemployment benefits this disqualification
4 shall not apply.

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

13 "a. For weeks of unemployment which begin prior to
14 April 26, 1982, as was prescribed by this subsection prior to
15 such date, and

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

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

1 "2. In the case of such a payment not made under the
2 Social Security Act or the Railroad Retirement Act of 1974 (or
3 the corresponding provisions of prior law), services performed
4 for such employer by the individual after the beginning of his
5 base period (or remuneration for such services) affect
6 eligibility for or increase the amount of, such payment.

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

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

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

1 he shall be entitled to receive for such week, if otherwise
2 eligible, benefits reduced by the amount of such payment.

3 "(10) EMPLOYMENT BY PUBLIC WORKS AGENCY, ETC. For
4 any week that such individual is engaged or employed by the
5 Works Progress Administration, the National Youth
6 Administration or any federal or state unit, agency or
7 instrumentality in charge of public works, assistance through
8 public employment or work relief.

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

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

1 receipt of training allowances under the Trade Readjustment
2 Act shall not be cause for disqualification under this
3 subdivision.

4 "(13) PARTICIPATION IN PROFESSIONAL SPORTS. For any
5 week which commences during the period between two successive
6 sport seasons (or similar periods) to any individual for which
7 benefits claimed are on the basis of any services,
8 substantially all of which consist of participating in sports
9 or athletic events or training or preparing to so participate,
10 if such individual performed such services in the first of
11 such seasons (or similar periods) and there is a reasonable
12 assurance that such individual will perform such services in
13 the later of such seasons (or similar periods).

14 "(14) ALIENS.

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

17 "1. Such alien is an individual who was lawfully
18 admitted for permanent residence at the time such services
19 were performed, and was lawfully present for purposes of
20 performing such services; or,

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

1 "3. Such alien was lawfully admitted for temporary
2 residence as provided for under the provisions of Section
3 245A(a) of the Immigration Reform and Control Act of 1986 (PL
4 99-603).

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

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

14 Section 2. This act shall become effective on the
15 first day of the third month following its passage and
16 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 Representatives committee on Military and Veterans Affairs..... 07-FEB-12

Read for the second time and placed on the calendar..... 16-FEB-12

Read for the third time and passed as amended..... 14-MAR-12

Yeas 89, Nays 0, Abstains 0

Greg Pappas
Clerk