

1 HB121
2 133446-1
3 By Representative Wren
4 RFD: Military and Veterans Affairs
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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 to read 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
24 was forced to leave work because he was sick or disabled,
25 notified 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
5 soon as it is reasonably practicable so to do; or

6 "(ii) Upon the expiration of a leave of absence
7 shall fail to return to said employer and offer himself for
8 work, if he shall then be able to work, or if he is not then
9 able to work, he fails to so notify his employer of that fact
10 and request an extension of his said leave of absence as soon
11 as 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
13 week 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. For separation occurring on or after the
2 effective date of the act adding this amendatory language, an
3 individual shall not be disqualified if he or she left his or
4 her employment to relocate as a result of his or her active
5 duty military-connected spouse's permanent change of station
6 orders, activation orders, or unit deployment orders. When
7 this exception is applied, any benefits paid to the individual
8 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 the employer.

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

24 "(3) DISCHARGE FOR MISCONDUCT.

25 "a. If he was discharged or removed from his work
26 for a dishonest or criminal act committed in connection with
27 his work or for sabotage or an act endangering the safety of

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

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

1 be allowed if the employee refuses to submit to or cooperate
2 with a blood or urine test as set forth above, or if the
3 employee knowingly alters or adulterates the blood or urine
4 specimen.

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

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

24 "When an individual is disqualified under this
25 paragraph:

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

1 thereafter until 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, has earned wages equal at least to 10 times his
5 weekly benefit amount and has been separated from such
6 employment for a nondisqualifying reason.

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

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

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

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

1 "b. If he was discharged from his most recent bona
2 fide work for actual or threatened misconduct committed in
3 connection with his work (other than acts mentioned in
4 paragraph a. of this subdivision (3)) repeated after previous
5 warning to the individual. When an individual is disqualified
6 under this paragraph, or exempt from disqualification for a
7 separation under such conditions prior to his most recent bona
8 fide work, the effect shall be the same as provided in
9 paragraph b. of subdivision (2) of this section for
10 disqualification or exemption from disqualification
11 respectively.

12 "c. If he was discharged from his most recent bona
13 fide work for misconduct connected with his work [other than
14 acts mentioned in paragraphs a. and b. of this subdivision
15 (3)]:

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

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

26 "3. Only one-half of the benefits paid to him based
27 upon wages for that period of employment immediately preceding

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

14 "d. If he has been suspended as a disciplinary
15 measure connected with his work, or for misconduct connected
16 with his work, he shall be disqualified from benefits for the
17 week or weeks (not to exceed four weeks) in which, or for
18 which, he is so suspended and the total amount of benefits to
19 which he may otherwise be entitled shall be reduced in the
20 same manner and to the same extent as provided in subparagraph
21 2 of paragraph c. of this subdivision (3).

22 "(4) REVOCATION OR SUSPENSION OF REQUIRED LICENSE,
23 ETC. For the week in which he has become unemployed because a
24 license, certificate, permit, bond, surety, or insurability
25 which is necessary for the performance of such employment and
26 which he is responsible to maintain or supply has been
27 revoked, suspended or otherwise become lost to him for a cause

1 other than one which would fall within the meaning of
2 subdivision (3) of this section, but one which was within his
3 power to control, guard against, or prevent, and for each week
4 thereafter until:

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

8 "b. He has reentered insured employment or
9 employment of the nature described in subdivisions (5), (6),
10 (7), (8), (9), (10), or (18) of subsection (b) of Section
11 25-4-10, whichever is the earlier.

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

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

1 apply unless the individual has an established benefit year,
2 or is seeking to establish one or is seeking extended benefits
3 at the time he fails without good cause, to do any of the acts
4 set out in this subdivision (5).

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

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

9 "2. His experience and prior earnings,

10 "3. His length of unemployment,

11 "4. His prospects for securing local work in his
12 customary occupation,

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

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

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

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

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

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

15 "(6) RECEIPT OF BACK PAY AWARD, ETC. For any week
16 with respect to which he is receiving or has received
17 remuneration in the form of a back pay award. Notwithstanding
18 the provisions of Section 25-4-91 any benefits previously paid
19 for weeks of unemployment with respect to which back pay
20 awards are made shall constitute an overpayment and such
21 amounts shall be deducted from the award by the employer prior
22 to payment to the employee and shall be transmitted promptly
23 to the director by the employer for application against the
24 overpayment and credit to the claimant's maximum benefit
25 amount and prompt deposit into the fund; provided, however,
26 the removal of any charges made against the employer as a
27 result of such previously paid benefits shall be applied to

1 the calendar year and the calendar quarter in which the
2 overpayment is received by the director and no attempt shall
3 be made to relate such a credit to the period to which the
4 award applies. Any amount of overpayment deducted by the
5 employer shall be subject to the same procedures for
6 collection as is provided for contributions by Section
7 25-4-134 of this chapter.

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

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

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

1 "b. For weeks of unemployment which begin on or
2 after April 26, 1982, the amount of any benefits payable to an
3 individual for any such week which begins in a period with
4 respect to which the disqualifying provisions of this
5 subdivision apply, shall be reduced (but not below zero) by an
6 amount equal to the amount of such pension, retirement or
7 retired pay, annuity, or other payment, which is reasonably
8 attributable to such week, provided, however, such reduction
9 required hereby shall apply to any pension, retirement or
10 retired pay, annuity, or other similar payment only if:

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

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

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

25 "d. If in accordance with this subdivision (8) any
26 individual is awarded pension payments retroactively covering
27 the same period for which the individual received benefits,

1 the retroactive payments shall constitute cause for
2 disqualification and any benefits paid during such period
3 shall be recovered.

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

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

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

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

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

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

25 "(14) ALIENS.

26 "a. For any week for which benefits claimed are on
27 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
6 United States under color of law at the time such services
7 were performed (including an alien who is lawfully present in
8 the United States as a result of the application of the
9 provisions of Section 203(a)(7) or Section 212(d)(5) of the
10 Immigration 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 act 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.