

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ENROLLED, 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, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. This definition

1 shall not relate to a dispute between an individual worker and
2 his employer.

3 "(2) VOLUNTARILY QUITTING WORK. If he has left his
4 most recent bona fide work voluntarily without good cause
5 connected with such work.

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

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

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

22 "2. In case of doubt that an individual was sick or
23 disabled, or as to the duration of any such sickness or
24 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):

1 "1. He shall not be entitled to benefits for the
2 week in which the disqualifying event occurs or for any week
3 thereafter until:

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

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

11 "(iii) He has been separated from such employment
12 under nondisqualifying conditions.

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

18 "3. For the purpose of the experience rating
19 provisions of Section 25-4-54, no portion of the benefits
20 payable to him, based upon wages paid to him for the period of
21 employment ending with the separation to which the
22 disqualification applies, shall be charged to the employer's
23 experience rating account. If the individual has been
24 separated from employment other than his most recent bona fide
25 work under conditions which would have been disqualifying

1 under this subdivision (2) had the separation been from his
2 most recent bona fide work and the employer answers a notice
3 of payment within 15 days after it is mailed to him detailing
4 the facts in connection with the separation, then no portion
5 of any benefits paid to him based upon wages for the period of
6 employment ending in such separation shall be charged to the
7 employer's experience rating account.

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

18 "d. For separation occurring on or after the
19 effective date of the act adding this amendatory language, an
20 individual shall not be disqualified if he or she left his or
21 her employment to permanently relocate as a result of his or
22 her active duty military-connected spouse's permanent change
23 of station orders, activation orders, or unit deployment
24 orders. When this exception is applied, any benefits paid to
25 the individual based upon wages paid for that period of

1 employment immediately preceding the separation to which the
2 exception is applied, which have not been heretofore charged
3 to the employer's experience rating account, shall not be
4 charged to the account of the employer.

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

16 "(3) DISCHARGE FOR MISCONDUCT.

17 "a. If he was discharged or removed from his work
18 for a dishonest or criminal act committed in connection with
19 his work or for sabotage or an act endangering the safety of
20 others or for the use of illegal drugs after previous warning
21 or for the refusal to submit to or cooperate with a blood or
22 urine test after previous warning. Disqualification under this
23 paragraph may be applied to separations prior to separation
24 from the most recent bona fide work only if the employer has
25 filed a notice with the director alleging that the separation

1 was under conditions described in this paragraph in such
2 manner and within such time as the director may prescribe.

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

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

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

20 "When an individual is disqualified under this
21 paragraph:

22 "1. He shall not be entitled to benefits for the
23 week in which the disqualifying event occurs or for any week
24 thereafter until he has reentered insured employment or
25 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
12 paid to the individual for the period of employment by the
13 employer by whom he was employed when the disqualifying event
14 occurred shall be charged to the employer's experience rating
15 account.

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

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

16 "d. If he has been suspended as a disciplinary
17 measure connected with his work, or for misconduct connected
18 with his work, he shall be disqualified from benefits for the
19 week or weeks (not to exceed four weeks) in which, or for
20 which, he is so suspended and the total amount of benefits to
21 which he may otherwise be entitled shall be reduced in the
22 same manner and to the same extent as provided in subparagraph
23 2 of paragraph c. of this subdivision (3).

24 "(4) REVOCATION OR SUSPENSION OF REQUIRED LICENSE,
25 ETC. For the week in which he has become unemployed because a

1 license, certificate, permit, bond, surety, or insurability
2 which is necessary for the performance of such employment and
3 which he is responsible to maintain or supply has been
4 revoked, suspended or otherwise become lost to him for a cause
5 other than one which would fall within the meaning of
6 subdivision (3) of this section, but one which was within his
7 power to control, guard against, or prevent, and for each week
8 thereafter until:

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

12 "b. He has reentered insured employment or
13 employment of the nature described in subdivisions (5), (6),
14 (7), (8), (9), (10), or (18) of subsection (b) of Section
15 25-4-10, whichever is the earlier.

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

21 "(5) FAILURE TO ACCEPT AVAILABLE SUITABLE WORK, ETC.
22 If he fails, without good cause, either to apply for or to
23 accept available suitable work or to return to his customary
24 self-employment when so directed by the director or when he is
25 notified of suitable work or it is offered him through a state

1 employment office or the United States Employment Service, or
2 directly or by written notice or offer to any such employment
3 office or employment service by an employer by whom the
4 individual was formerly employed. Such disqualification shall
5 be for a period of not less than one nor more than 10 weeks
6 from the date of said failure. This disqualification shall not
7 apply unless the individual has an established benefit year,
8 or is seeking to establish one or is seeking extended benefits
9 at the time he fails without good cause, to do any of the acts
10 set out in this subdivision (5).

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

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

15 "2. His experience and prior earnings,

16 "3. His length of unemployment,

17 "4. His prospects for securing local work in his
18 customary occupation,

19 "5. The distance of the available work from his
20 residence; provided, that no work or employment shall be
21 deemed unsuitable because of its distance from the
22 individual's residence, if such work or employment is in the
23 same or substantially the same locality as was his last
24 previous regular place of employment and if the employee left

1 such voluntarily without good cause connected with such
2 employment.

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

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

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

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

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

24 "(6) RECEIPT OF BACK PAY AWARD, ETC. For any week
25 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

1 entitled to such unemployment benefits this disqualification
 2 shall not apply.

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

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

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

24 "1. Such payment is made under a plan maintained (or
 25 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

1 the benefits which would otherwise be due under this chapter,
 2 he shall be entitled to receive for such week, if otherwise
 3 eligible, benefits reduced by the amount of such payment.

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

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

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

1 would otherwise be due under this chapter he shall be entitled
 2 to receive, if otherwise eligible, weekly benefits reduced by
 3 the amount of such remuneration. It is further provided that
 4 receipt of training allowances under the Trade Readjustment
 5 Act shall not be cause for disqualification under this
 6 subdivision.

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

17 "(14) ALIENS.

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

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

24 "2. Such alien was permanently residing in the
 25 United States under color of law at the time such services

1 were performed (including an alien who is lawfully present in
 2 the United States as a result of the application of the
 3 provisions of Section 203(a)(7) or Section 212(d)(5) of the
 4 Immigration and Nationality Act); or,

5 "3. Such alien was lawfully admitted for temporary
 6 residence as provided for under the provisions of Section
 7 245A(a) of the Immigration Reform and Control Act of 1986 (PL
 8 99-603).

9 "b. Any data or information required of individuals
 10 applying for benefits to determine whether benefits are not
 11 payable to them because of their alien status shall be
 12 uniformly required from all applicants for benefits.

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

18 Section 2. This act shall become effective on the
 19 first day of the third month following its passage and
 20 approval by the Governor, or its otherwise becoming law.

