

HOUSE BILL NO. 2040

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on \_\_\_\_\_)

(Patrons Prior to Substitute--Delegates Hudson and Askew [HB 1977])

A BILL to amend and reenact §§ 60.2-619 and 60.2-633 of the Code of Virginia, relating to unemployment compensation; continuation of benefits; repayment of overpayments.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 60.2-619 and 60.2-633 of the Code of Virginia are amended and reenacted as follows:**

**§ 60.2-619. Determinations and decisions by deputy; appeals therefrom.**

A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim. On the basis of the facts found by him, the deputy shall either:

a. Determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission, which tribunal or Commission shall make its determination in accordance with the procedure described in § 60.2-620.

2. When the payment or denial of benefits will be determined by the provisions of subdivision 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to any appeal tribunal, which shall make its determination in accordance with the procedure described in § 60.2-620.

B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant and all subsequent employing units, and any reimbursable employing units ~~which~~ that may be liable for reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall not have any effect upon the claim for benefits. If a claimant has had a determination of initial eligibility

27 for benefits under this chapter, as evidenced by the issuance of compensation or waiting-week credit,  
28 payments shall continue, subject to a presumption of continued eligibility and in accordance with the terms  
29 of this subsection, until a determination is made that provides the claimant notice and an opportunity to  
30 be heard. When a question concerning continued eligibility for benefits arises, a determination shall be  
31 made as to whether it affects future weeks of benefits or only past weeks. With respect to future weeks,  
32 presumptive payment shall not be made until but no later than the end of the week following the week in  
33 which such issue arises, regardless of the type of issue. With respect to past weeks, presumptive payment  
34 shall be issued immediately, regardless of the type of issue. Notice shall be given to individuals who  
35 receive payments under such presumption that pending eligibility may affect their entitlement to the  
36 payment and may result in an overpayment that requires repayment.

37 C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or  
38 by mailing such notice to the claimant's last known address. In addition, notice of any determination ~~which~~  
39 that involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be  
40 promptly given in the same manner to the most recent 30-day or 240-hour employing unit by whom the  
41 claimant was last employed and any subsequent employing unit which is a party. The Commission may  
42 dispense with the giving of notice of any determination to any employing unit, and such employing unit  
43 shall not be entitled to such notice if it has failed to respond timely or adequately to a written request of  
44 the Commission for information, as required by § 60.2-528.1, from which the deputy may have determined  
45 that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall  
46 promptly notify the claimant of any decision made by him at any time which in any manner denies benefits  
47 to the claimant for one or more weeks.

48 D. Such determination or decision shall be final unless the claimant or any such employing unit  
49 files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such  
50 notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or  
51 (iii) within 30 days after such notification was mailed to the last known address of an interstate claimant.  
52 For good cause shown, the 30-day period may be extended.

53 E. Benefits shall be paid promptly in accordance with a determination or redetermination under  
54 this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court  
55 under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision,  
56 regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in  
57 this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such  
58 determination, redetermination or decision has been modified or reversed by a subsequent redetermination  
59 or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in  
60 accordance with such modifying or reversing redetermination or decision. If a decision of an appeal  
61 tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid  
62 until such time as a court decision has become final so that no further appeal can be taken. If an appeal is  
63 taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the  
64 employer under § 60.2-530 only when, and as of the date on which, as the result of an appeal, the courts  
65 finally determine that the Commission should have awarded benefits to the claimant or claimants involved  
66 in such appeal.

67 **§ 60.2-633. Receiving benefits to which not entitled.**

68 A. Any person who has received any sum as benefits under this title to which he was not entitled  
69 shall be liable to repay such sum to the Commission. For purposes of this section, "benefits under this  
70 title" includes benefits under an unemployment benefit program of the United States or of any other state.  
71 In the event the claimant does not refund the overpayment, the Commission shall deduct from any future  
72 benefits such sum payable to him under this title. The Commission shall waive the requirement to repay  
73 the overpayment after an individual case review if (i) the overpayment was made without fault on the part  
74 of the individual and (ii) requiring repayment would be contrary to equity and good conscience.

75 For the purposes of this section:

76 1. An overpayment made "without fault on the part of the individual" shall include overpayments  
77 that (i) result from administrative error; (ii) are the result of inducement, solicitation, or coercion on the  
78 part of the employer; or (iii) result from the employer's failure to respond timely or adequately to the  
79 Commission's request for information, as required by § 60.2-528.1. An overpayment shall not be

80 considered "without fault on the part of the individual" if such overpayment was the result of (a) a reversal  
81 in the appeals process, unless the employer failed to respond timely or adequately to the Commission's  
82 request for information regarding the individual's separation from employment, or (b) a programming,  
83 technological, or automated system error not directly associated with an individual claim that results in  
84 erroneous payments to a group of individuals.

85 2. It shall be contrary to equity and good conscience if requiring repayment of an overpayment  
86 would deprive the individual of the income required to provide for basic necessities, including shelter,  
87 food, medicine, child care, or any other essential living expenses.

88 ~~However, if an overpayment of benefits under this chapter, but not under an unemployment benefit~~  
89 ~~program of the United States or of any other state, occurred due to administrative error, For any~~  
90 overpayment where repayment is not forgiven, the Commission shall have the authority to negotiate the  
91 terms of repayment, which shall include ~~(i)~~ (a) deducting up to 50 percent of the payable amount for any  
92 future week of benefits claimed, rounded down to the next lowest dollar until the overpayment is satisfied;  
93 ~~(ii)~~ (b) forgoing collection of the payable amount until the recipient has found employment as defined in  
94 § 60.2-212; or ~~(iii)~~ (c) determining and instituting an individualized repayment plan.

95 The Commission shall collect an overpayment of benefits under this chapter caused by  
96 administrative error only by offset against future benefits or a negotiated repayment plan; however, the  
97 Commission may institute any other method of collection if the individual fails to enter into or comply  
98 with the terms of the repayment plan. Administrative error shall not include decisions reversed in the  
99 appeals process. ~~In addition, the overpayment~~

100 Overpayments where the obligation to repay has not been waived may be collectible by civil action  
101 in the name of the Commission. Amounts collected in this manner may be subject to an interest charge as  
102 prescribed in § 58.1-15 from the date of judgment and may be subject to fees and costs. Collection  
103 activities for any benefit overpayment established of ~~five dollars~~ \$5 or less may be suspended. The  
104 Commission may, for good cause, determine as uncollectible and discharge from its records any benefit  
105 overpayment which remains unpaid after the expiration of seven years from the date such overpayment  
106 was determined, or immediately upon the death of such person or upon his discharge in bankruptcy

107 occurring subsequently to the determination of overpayment. Any existing overpayment balance not equal  
108 to an even dollar amount shall be rounded to the next lowest even dollar amount.

109 B. The Commission is authorized to accept repayment of benefit overpayments by use of a credit  
110 card. The Virginia Employment Commission shall add to such payment a service charge for the acceptance  
111 of such card. Such service charge shall not exceed the percentage charged to the Virginia Employment  
112 Commission for use of such card.

113 C. No determination with respect to benefit overpayments shall be issued until after a  
114 determination or decision that finds a claimant ineligible or disqualified for benefits previously paid has  
115 become final.

116 ~~C.~~D. Final orders of the Commission with respect to benefit overpayments may be recorded,  
117 enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the  
118 Commissioner as may be appropriate.

119 **2. That the Virginia Employment Commission (the Commission) shall notify each person with an**  
120 **unpaid overpayment of benefits established for claim weeks paid commencing March 15, 2020,**  
121 **under Chapter 6 (§ 60.2-600 et seq.) of Title 60.2 of the Code of Virginia, or under an unemployment**  
122 **benefit program of the United States or any other state, that such individual may be entitled to a**  
123 **waiver of obligation to repay such overpayment and shall provide 30 days from the date of such**  
124 **notification for the individual to request a waiver of repayment. For good cause shown, the**  
125 **Commission may extend the 30-day period for requesting a waiver. The Commission shall conduct**  
126 **an individualized review and adjudicate any request received in accordance with the provisions of**  
127 **§ 60.2-619 of the Code of Virginia, as amended by this act, and any individual who is denied a waiver**  
128 **shall have the right to appeal as provided in subsection D of § 60.2-619 of the Code of Virginia, as**  
129 **amended by this act. In ruling on any waiver request, the Commission shall apply the provisions of**  
130 **Title 60.2 or, if applicable, the overpayment waiver provisions of any unemployment compensation**  
131 **program of the United States.**

132 **3. That the provisions of this act that allow the waiver of any obligation to repay overpayments**  
133 **established for the week commencing March 15, 2020, through the week commencing June 26, 2021,**

134 shall apply only to overpayment balances that remain outstanding as of July 1, 2021. Amounts  
135 already paid or collected against such overpayments shall not be reimbursed to the claimant.

136 4. That notwithstanding any provision to the contrary, the Virginia Employment Commission may  
137 suspend or forgo referring any overpayment established since March 15, 2020, to the collections  
138 process established under § 2.2-4806 of the Code of Virginia. However, the authority to suspend or  
139 forgo such referrals shall expire on July 1, 2022.

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