

House Bill 1474

By: Representatives Mobley of the 58th and Thomas of the 43rd, Post 1

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated,
2 relating to benefits under the Employment Security Law, so as to provide that an individual
3 shall not be disqualified for benefits under certain circumstances as a result of family
4 violence or the prevention thereof; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Article 7 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
8 benefits under the Employment Security Law, is amended by striking Code Section
9 34-8-194, relating to grounds for disqualification, and inserting in its place the following:
10 "34-8-194.

11 An individual shall be disqualified for benefits:

12 (1) For the week or fraction thereof in which the individual has filed an otherwise valid
13 claim for benefits after such individual has left the most recent employer voluntarily
14 without good cause in connection with the individual's most recent work. Good cause
15 shall be determined by the Commissioner according to the circumstances in the case. To
16 requalify following a disqualification, an individual must secure subsequent employment
17 for which the individual earns insured wages equal to at least ten times the weekly benefit
18 amount of the claim and then becomes unemployed through no fault on the part of the
19 individual. Notwithstanding the foregoing, in the Commissioner's determination the
20 burden of proof of good work connected cause for voluntarily leaving such work shall be
21 on the individual. Benefits shall not be denied under this paragraph, however, to an
22 individual for separation from employment pursuant to a labor management contract or
23 agreement or pursuant to an established employer plan, program, policy, layoff, or recall
24 which permits the individual, because of lack of work, to accept a separation from
25 employment;

1 (2)(A) For the week or fraction thereof in which such individual has filed an otherwise
2 valid claim for benefits after the individual has been discharged or suspended from
3 work with the most recent employer for failure to obey orders, rules, or instructions or
4 for failure to discharge the duties for which the individual was employed as determined
5 by the Commissioner according to the circumstances in the case. To requalify following
6 a disqualification, an individual must secure subsequent employment for which the
7 individual earns insured wages equal to at least ten times the weekly benefit amount of
8 the claim and then becomes unemployed through no fault on the part of the individual.
9 Notwithstanding the foregoing, in the Commissioner's determination the burden of
10 proof of just discharge or suspension for cause as set forth shall be on the employer and
11 the presumption shall be with the employee; provided, however, that:

12 (i) An individual shall secure employment and show to the satisfaction of the
13 Commissioner that such individual has performed services in bona fide employment
14 and earned insured wages equal to at least 12 times the weekly benefit amount of the
15 claim and has lost that job through no fault on the part of such individual, if it is
16 determined by the Commissioner that the individual has been discharged for cause by
17 the most recent employer for one or more of the following reasons:

18 (I) Intentional conduct on the premises of the employer or while on the job which
19 results in a physical assault upon or bodily injury to the employer, fellow
20 employees, customers, patients, bystanders, or the eventual consumer of products;
21 or

22 (II) Intentional conduct that results in the employee's being discharged for, and
23 limited to, the following: theft of property, goods, or money valued at \$100.00 or
24 less; and

25 (ii) An individual shall secure employment and show to the satisfaction of the
26 Commissioner that he or she has performed services in bona fide employment and
27 earned insured wages equal to at least 16 times the weekly benefit amount of the
28 claim if it is determined by the Commissioner that the individual has been discharged
29 for cause by the most recent employer for one or more of the following reasons:

30 (I) Intentional conduct by the employee which results in property loss or damages
31 amounting to \$2,000.00 or more; or

32 (II) Intentional conduct that results in the employee's being discharged for, and
33 limited to, the following: theft of property, goods, or money valued at over \$100.00,
34 sabotage, or embezzlement.

35 (B) An individual shall not be disqualified for benefits under subparagraph (A) of this
36 paragraph if, based on the rules and regulations promulgated by the Commissioner, the
37 Commissioner determines:

1 (i) The individual made a good faith effort to perform the duties for which hired but
2 was simply unable to do so;

3 (ii) The individual did not intentionally fail or consciously neglect to perform his or
4 her job duties;

5 (iii) The discharge occurred because of absenteeism and the absences were caused
6 by illness of the claimant or a family member, unless the claimant has without
7 justification failed to notify the employer;

8 (iv) The discharge occurred as a violation of the employer's rule of which the
9 claimant was not informed by having been made aware thereof by the employer or
10 through common knowledge. Consistency of prior enforcement shall be taken into
11 account as to the reasonableness or existence of the rule and such rule must be lawful
12 and reasonably related to the job environment and job performance; ~~or~~

13 (v) Except for activity requiring disqualification under paragraph (4) of this Code
14 section, the employee was exercising a protected right to protest against wages, hours,
15 working conditions, or job safety under the federal National Labor Relations Act or
16 other laws; or

17 (vi) That the actions taken by the employee were necessary to protect the employee
18 or an immediate family member from family violence as defined in Code Section
19 19-13-1 or were the direct result of family violence committed against the employee
20 or an immediate family member and the employee made all reasonable efforts to
21 preserve the employment.

22 (C) For the week or fraction thereof in which such individual has filed an otherwise
23 valid claim for benefits after the individual has been discharged or suspended for
24 violation of the employer's drug-free workplace policy as determined by the
25 Commissioner according to the circumstances in the case. To requalify following a
26 disqualification under this subparagraph, an individual must secure subsequent
27 employment for which the individual earns insured wages equal to at least ten times the
28 weekly benefit amount of the claim and then become unemployed through no fault on
29 the part of the individual. Notwithstanding the foregoing, in the Commissioner's
30 determination the burden of proof of just discharge or suspension for cause as set forth
31 in this subparagraph shall be on the employer and the presumption of eligibility shall
32 be with the employee; provided, however, that in cases where a drug or alcohol test is
33 utilized to prove a violation of the employer's drug-free workplace policy:

34 (i) The employer's burden of proof of just discharge or suspension shall be presumed
35 met if the individual fails a drug screening test which is required by terms of the
36 employer's drug-free workplace policy and said policy complies with the provisions
37 of Article 11 of Chapter 9 of this title, other substantially equivalent or more stringent

1 standards established by federal law or regulations, or with rules and regulations
2 prescribed by the Commissioner;

3 (ii) The laboratory test results, including but not limited to, documentation of the
4 chain of custody, methodology, and the accuracy of the drug screening test shall be
5 admissible and self-authenticating in an administrative hearing conducted by the
6 Commissioner with respect to a disputed claim for unemployment benefits under this
7 chapter, and such evidence shall create a rebuttable presumption that the individual
8 violated the employer's drug-free workplace policy; provided, however, that any other
9 evidence relating to the issue of eligibility and the provisions of this subparagraph
10 may be received in person or by telecommunications at the hearing; and

11 (iii) Laboratory test results submitted by the individual, including but not limited to
12 documentation of the chain of custody, methodology, and the accuracy of the drug
13 screening test shall be admissible and self-authenticating in an administrative hearing
14 conducted by the Commissioner with respect to a disputed claim for unemployment
15 benefits under this chapter;

16 (3)(A) If, after the claimant has filed an otherwise valid claim for benefits, the claimant
17 has failed without good cause either to apply for available, suitable work when so
18 directed by an employment office or the Commissioner or to accept suitable work when
19 offered to the claimant by any employer. Such disqualification shall continue until he
20 or she has secured subsequent employment for which the individual has earned insured
21 wages equal to at least ten times the weekly benefit amount of the claim and has lost
22 that job through no fault on the part of the individual.

23 (B) In determining whether or not any work is suitable for an individual, the
24 Commissioner shall consider the degree of risk involved to his or her health, safety, and
25 morals; his or her physical fitness and prior training; his or her experience and prior
26 earnings; his or her length of unemployment and prospects for securing local work in
27 his or her customary occupation; and the distance of the available work from his or her
28 residence. The length of unemployment shall be given full consideration and, after an
29 adjustment period, the claimant must accept work involving less competence and at a
30 lower remuneration. If a claimant has received ten weeks of benefits during his or her
31 current period of unemployment, no work otherwise suitable shall be considered
32 unsuitable because of prior training, experience, prior earnings, or level of
33 compensation, provided such compensation is equal to or exceeds 66 percent of the
34 claimant's highest calendar quarter base period earnings; provided, however, that such
35 compensation must be equal to or greater than the minimum wage established by
36 federal or state laws.

1 (C) Notwithstanding any other provisions of this chapter, no work shall be deemed
2 suitable and benefits shall not be denied under this chapter to any otherwise eligible
3 individual for refusing to accept new work:

4 (i) If the position offered is vacant due directly to a strike, lockout, or other labor
5 dispute;

6 (ii) If the wages, hours, or other conditions of the work offered are less favorable to
7 the individual than those prevailing for similar work in the locality; or

8 (iii) If, as a condition of being employed, the individual would be required to join a
9 company union or to resign from or refrain from joining any bona fide labor
10 organization;

11 (4) For any week with respect to which the Commissioner finds that his or her total or
12 partial unemployment is due to a stoppage of work which exists because of a labor
13 dispute at the factory, establishment, or other premises at which he or she is or was last
14 employed. If, in any case, separate branches of work which are commonly conducted as
15 separate businesses in separate premises are conducted in separate departments of the
16 same premises, each such department shall, for the purposes of this paragraph, be deemed
17 to be a separate factory, establishment, or other premises. This paragraph shall not apply
18 if it is shown to the satisfaction of the Commissioner that:

19 (A) He or she is not participating in or financing or directly interested in the labor
20 dispute which caused the stoppage of work;

21 (B) He or she does not belong to a grade or class of workers of which, immediately
22 before the commencement of the stoppage, there were members employed at the
23 premises at which the stoppage occurs, any of whom are participating in or financing
24 or directly interested in the dispute; or

25 (C) A lockout has occurred following the expiration of the most recent working
26 agreement without any offer of or refusal to continue that agreement during continued
27 negotiations for a new agreement acceptable to employer and employee.

28 When a stoppage of work due to a labor dispute ceases and operations are resumed at the
29 factory, establishment, or other premises at which the employee is or was last employed
30 but the employee has not been restored to such last employment, the employee's
31 disqualification for benefits under this paragraph shall be deemed to have ceased at such
32 time as the Commissioner shall determine such stoppage of work to have ceased and such
33 operations to have been resumed. Benefits shall not be paid for any week during which
34 the employee is engaged in picketing or is a participant in a picket line at the factory,
35 establishment, or other premises at which the employee is or was last employed even
36 though the stoppage of work shall have ceased and operations have been resumed;

1 (5) For any week with respect to which the employee is receiving or has received
2 remuneration in the form of:

3 (A) Wages in lieu of notice, terminal leave pay, severance pay, separation pay, or
4 dismissal payments or wages by whatever name, regardless of whether the
5 remuneration is voluntary or required by policy or contract; provided, however, such
6 remuneration shall only affect entitlement if the remuneration for such week exceeds
7 the individual's weekly benefit amount. Remuneration for accrued but unused annual
8 leave, vacation pay, sick leave, or payments from employer funded supplemental
9 unemployment plans, pension plans, profit-sharing plans, deferred compensation, or
10 stock bonus plans or seniority buyback plans shall not affect entitlement. In the case of
11 lump sum payments or periodic payments which are less than the individual's weekly
12 wage, such payments shall be prorated by weeks on the basis of the most recent weekly
13 wage of the individual for a standard work week; or

14 (B) Compensation for temporary partial or temporary total disability under the
15 workers' compensation law of any state or under a similar law of the United States;

16 (6) For any week with respect to which he or she has received or is seeking
17 unemployment compensation under an unemployment compensation law of another state
18 or of the United States; or

19 (7) If while attending a training course as provided in Code Section 34-8-195, he or she
20 voluntarily ceases attending such course without good cause. Such disqualification shall
21 continue pursuant to the provisions of paragraph (1) of this Code section. However, if any
22 individual is separated from training approved under Code Section 34-8-195 due to the
23 individual's own failure to abide by rules of the training facility, he or she shall be
24 disqualified for benefits under the provisions of paragraph (2) of this Code section."

25 SECTION 2.

26 All laws and parts of laws in conflict with this Act are repealed.