SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 60.2-111, 60.2-622, and 60.2-630 of the Code of Virginia and to repeal the second enactment of Chapter 746 and the second enactment of Chapter 772 of the Acts of Assembly of 2024, relating to unemployment compensation; appeals; Virginia Employment Commission review; repayment of overpayments; sunset repealed.

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-111, 60.2-622, and 60.2-630 of the Code of Virginia are amended and reenacted as follows:

§ 60.2-111. Duties and powers of Commission; reporting requirements.

A. It shall be the duty of the Commission to administer this title. The Commission may establish separate divisions as necessary to carry out the duties and powers prescribed by this section. It shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action, including the appointment of advisory groups, as it deems necessary or suitable to that end. Such rules and regulations shall be subject to the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, except as to the subject matter of subdivisions 2 and 3 of § 60.2-515, which shall become effective in the manner prescribed by § 2.2-4103. The Commission shall determine its own organization and methods of procedure in accordance with provisions of this title, and shall have an official seal which shall be judicially noticed. In the discharge of the duties imposed by this title, the Commissioner shall have the authority to authorize any attorney employed by the Commission to have the power to issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the investigation or adjudication of any disputed claim or the administration of this title. Any party who disputes such subpoena may file a motion to quash any subpoena issued pursuant to this section prior to the date production is required in a miscellaneous action in a circuit court for which such motion shall be given priority on the docket.

B. The Commission shall take all necessary steps to maintain a solvent trust fund financed through equitable employer taxes that provides temporary partial income replacement to involuntarily unemployed covered workers.

C. The Commission shall prepare an annual balance sheet of the moneys in the fund and in the Unemployment Trust Fund to the credit of the Commonwealth in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then-current taxes. That reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in tax or benefit rates is necessary to protect the solvency of the Fund, it shall promptly so inform the Governor and the General Assembly and make recommendations with respect thereto.

D. In preparing the annual balance sheet required by subsection C, the Commission shall regularly track metrics related to unemployment insurance benefits, establish a mechanism to help assess the adequacy of benefits, and examine metrics related to recipiency, average benefit levels, and benefit income replacement ratios. The annual balance sheet shall include the following calculations: (i) the average unemployment insurance benefit levels, (ii) the average income replacement of unemployment insurance benefits, and (iii) the recipiency rate for unemployment insurance benefits in the Commonwealth.

E. The Commission, as part of its biennial strategic plan submitted to the Department of Planning and Budget, shall develop and maintain a comprehensive unemployment insurance Resiliency Plan that describes specific actions the Commission will take, depending on the level of increase in unemployment insurance (UI) claims, to address staffing, communications, and other relevant aspects of operations to ensure continued efficient and effective administration of the UI program. The Resiliency Plan shall include proposed actions consistent with the following objectives to effectively prepare for periods of high unemployment:

1. Develop specific strategies or steps the Commission will take to modify staffing levels in response to incidents that increase UI program demand. These strategies or steps shall (i) include a staffing plan for varying levels of UI workload volume, (ii) cover several scenarios that may affect UI assistance

services, (iii) explain how existing staff would be reallocated to high-priority functions in response to high demand, and (iv) describe how the Commission's hiring process will be streamlined to fill key vacant positions such as adjudication and appeals staff.

2. Develop specific strategies or steps the Commission will take to modify policies, procedures, or processes in response to high demands on its services.

3. Outline a strategy for clearly communicating key UI program changes to customers. This strategy shall indicate which staff will be responsible for different types of communications and include several communications goals, such as clearly conveying UI program and policy changes.

4. Outline a strategy for clearly communicating important UI information to Commission staff, the public, and the General Assembly.

5. Formalize a policy for prioritizing and assigning claims for adjudication during periods of high claims volume. This policy shall detail how prioritization may change in response to claims volume and state that the policy of the Commission is to generally prioritize resolving older claims before newer claims.

6. Identify other tactical actions to be taken to ensure the continuity of UI claims processing and customer service.

F. 1. The Commission shall designate certain decisions issued pursuant to §§ 60.2-620 and 60.2-622 as precedents and shall publish such precedents on its website with any personally identifiable information redacted. The Commission's determinations shall be controlled by such precedents except as modified by judicial review pursuant to § 60.2-625.

2. If a final judgment of a court of competent jurisdiction reverses or declares invalid a precedent designated pursuant to subdivision 1, the Commission shall promptly modify such precedent as applicable to conform in all respects to the judgment of the court. The modified precedent shall supersede the prior precedent for all purposes. The Commission shall promptly notify its deputies, its appeals and special examiners, and the public of the modified precedent by publication on the Commission's website.

3. The Commission shall publish and make available any opinions, statements of policy, interpretations, and staff manuals and instructions that affect a party to a claim for compensation under this title.

4. A precedent, opinion, statement of policy, interpretation, or staff manual or instruction that affects a party to a claim for compensation under this title may be relied on, used, or cited as precedent by the Commission against another party only if published as provided by this subsection or if the party has actual and timely notice of the terms thereof.

§ 60.2-622. Commission review.

A. 1. The Commission (i) may on its own motion affirm, modify, or set aside any decision of an appeals examiner on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence by an appeals examiner, or receive such evidence itself, or (ii) shall permit any of the parties to such decision to initiate further appeals before it.

2. The Commission may remove to itself or transfer to another appeals examiner the proceedings on any claim pending before an appeals examiner. Any proceeding so removed to the Commission shall be heard in accordance with the requirements of § 60.2-620. The Commission shall promptly notify the interested parties of its findings and decision. Such decision shall become final unless, within 30 days after the date of such notification, further appeal is initiated pursuant to this section. The Commission may extend such 30-day period for good cause shown. If such further appeal is initiated, the proceeding shall be assigned to a new Commission review in accordance with subdivision 1, provided that a new special examiner shall be assigned to adjudicate such review.

B. 1. ~~Any~~ Except for proceedings removed under subdivision A 2, any decision of the Commission, upon a hearing on appeal, shall become final 10 days after the date of notification or mailing, and judicial review shall be permitted the claimant or any interested party claiming to be aggrieved. The Commission shall be deemed to be a party to any judicial action involving any such decision, and shall be represented in any such judicial action by the Office of the Attorney General.

2. Any such decision by the Commission involving (i) whether an employing unit constitutes an employer or (ii) whether services performed for or in connection with business of an employing unit

constitute employment for such employing unit, from which no judicial review is had pursuant to subsections C and D of § 60.2-500, shall be conclusive in any subsequent judicial proceedings involving liability for taxes by the Commission against any employing unit which was a party to the proceedings held before the Commission.

C. The Commissioner shall have the power to designate a special examiner to hear appeals to the Commission under this section. The Commissioner may authorize and empower such special examiner to decide any appeal so heard, in which event the decision of the special examiner shall be the final decision of the Commission under this section, subject to judicial review under § 60.2-625.

§ 60.2-630. Authority to set aside or vacate determinations and decisions.

A. The Commission may, in its discretion, at any time before a determination or decision becomes final pursuant to § 60.2-619 or 60.2-622, with good cause set aside or modify any such determination or decision.

B. In a case not involving the application of the provisions of § 60.2-618, the Commission may set aside or modify any determination or decision denying an individual benefits in favor of such individual at any time without regard to whether such determination or decision has otherwise become final.

2. That the second enactment of Chapter 746 and the second enactment of Chapter 772 of the Acts of Assembly of 2024 are repealed.

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