

Assembly Bill No. 2055

CHAPTER 590

An act to amend Sections 1030, 1032, 1256, 3701, and 4701 of the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 30, 2010. Filed with
Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2055, De La Torre. Unemployment insurance: benefits: eligibility: reserve accounts: domestic partners.

Existing law provides for the payment of unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own. Existing law specifies that an individual is disqualified from receiving benefits if the Director of Employment Development finds that he or she left his or her most recent work voluntarily without cause or that he or she has been discharged for misconduct connected with his or her most recent work. Under existing law, an individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place from which it is impracticable to commute to the employment, and specifies that, for purposes of those provisions, "spouse" includes a person to whom marriage is imminent.

Existing law authorizes any employer who is entitled to receive specified notice of an unemployment claim to, within 10 days after mailing of the notice, submit to the Employment Development Department specified facts disclosing whether the claimant for benefits left the employer's employ voluntarily and with good cause under certain circumstances. Existing law provides that if a claimant left under specified circumstances, including, among others, if he or she left the employer's employ to accompany his or her spouse or domestic partner to a place from which it is impracticable to commute to the employment, the benefits paid to the claimant are not charged to the employer's reserve account, as specified.

This bill would specify that, for purposes of those provisions governing eligibility for benefits and employer's reserve accounts, "domestic partner" also includes a person to whom domestic partnership, as described, is imminent. Because the bill would provide for additional amounts payable for unemployment benefits from the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation.

This bill would incorporate additional changes in Sections 1030, 1032, and 1256 of the Unemployment Insurance Code, proposed by AB 2364, to

be operative only if AB 2364 and this bill are both chaptered and become effective January 1, 2011, and this bill is chaptered last.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1030 of the Unemployment Insurance Code is amended to read:

1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of the notice, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(3) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(4) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(5) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(b) Any base period employer that is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of the notice of computation, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(3) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(4) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(c) The department shall consider these facts together with any information in its possession. If the employer is entitled to a ruling under subdivision (b) or to a determination under Section 1328, the department shall promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. The director is an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. However, a ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(d) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons for the leaving, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving is presumed to be without good cause.

(e) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(f) For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

SEC. 1.5. Section 1030 of the Unemployment Insurance Code is amended to read:

1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of the notice, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(3) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(4) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(5) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(b) Any base period employer that is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of the notice of computation, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(3) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(4) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(c) The department shall consider these facts together with any information in its possession. If the employer is entitled to a ruling under subdivision (b) or to a determination under Section 1328, the department shall promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. The director is an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. However, a ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision

(a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(d) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons for the leaving, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving is presumed to be without good cause.

(e) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(f) For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

SEC. 2. Section 1032 of the Unemployment Insurance Code is amended to read:

1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause, or left under one of the following circumstances, benefits paid to the claimant subsequent to the termination of employment that are based upon wages earned from the employer prior to the date of the termination of employment shall not be charged to the account of the employer, except as provided by Section 1026, unless the employer failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless that ruling is reversed by a reconsidered ruling:

(a) The claimant was discharged by reason of misconduct connected with his or her work.

(b) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(c) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(d) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

(e) The claimant left the employer's employ to take a substantially better job.

(f) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(g) For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

SEC. 2.5. Section 1032 of the Unemployment Insurance Code is amended to read:

1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause, or left under one of the following circumstances, benefits paid to the claimant subsequent to the termination of employment that are based upon wages earned from the employer prior to the date of the termination of employment shall not be charged to the account of the employer, except as provided by Section 1026, unless the employer failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless that ruling is reversed by a reconsidered ruling:

(a) The claimant was discharged by reason of misconduct connected with his or her work.

(b) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(c) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(d) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

(e) The claimant left the employer's employ to take a substantially better job.

(f) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(g) For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

SEC. 3. Section 1256 of the Unemployment Insurance Code is amended to read:

1256. An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.

An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment. For purposes of this section “spouse” includes a person to whom marriage is imminent, and “domestic partner” includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence abuse.

An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority may elect to be laid off in place of an employee with less seniority when the employer has decided to lay off employees.

SEC. 3.5. Section 1256 of the Unemployment Insurance Code is amended to read:

1256. An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.

An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment. For purposes of this section “spouse” includes a person to whom marriage is imminent, and “domestic partner” includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her family, or himself or herself, from domestic violence abuse.

An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority may elect to

be laid off in place of an employee with less seniority when the employer has decided to lay off employees.

SEC. 4. Section 3701 of the Unemployment Insurance Code is amended to read:

3701. (a) (1) Any employer who is entitled under Section 3654 to notice of the filing of a primary claim or additional claim and who, within 10 days after mailing of the notice, submits to the department any facts within its possession disclosing whether the exhaustee left the most recent employment with the employer voluntarily and without good cause or was discharged from the employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available or whether the claimant's discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages, shall be entitled to a ruling as prescribed by this section. The period during which the employer may submit these facts may be extended by the director for good cause.

(2) For purposes of this section, "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

(b) The department shall consider these facts together with any information in its possession. If the employer is entitled to a determination pursuant to Section 3655, the department shall promptly notify the employer of its ruling as to the cause of the termination of the exhaustee's most recent employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling, except that any ruling or reconsidered ruling which related to a determination is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(c) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons therefor, and if the employer submits all of the facts within its possession

concerning the leaving within the applicable time period referred to in this section, the leaving shall be presumed to be without good cause.

(d) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(e) Rulings under this section shall have the effect prescribed by Section 1032.

SEC. 5. Section 4701 of the Unemployment Insurance Code is amended to read:

4701. (a) (1) Any employer who is entitled under Section 4654 to notice of the filing of an application or additional claim and who, within 10 days after mailing of the notice, submits to the department any facts within its possession disclosing whether the individual left the most recent employment with the employer voluntarily and without good cause or was discharged from the employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available or whether the claimant's discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages, shall be entitled to a ruling as prescribed by this section. The period during which the employer may submit these facts may be extended by the director for good cause.

(2) For purposes of this section, "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

(b) The department shall consider the facts together with any information in its possession. If the employer is entitled to a determination pursuant to Section 4655, the department shall promptly issue to the employer its ruling as to the cause of the termination of the individual's most recent employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling, except that any ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision (a) of Section

1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(c) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons therefor, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving shall be presumed to be without good cause.

(d) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(e) Rulings under this section shall have the effect prescribed by Section 1032.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 1030 of the Unemployment Insurance Code proposed by both this bill and AB 2364. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 1030 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2364, in which case Section 1 of this bill shall not become operative.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 1032 of the Unemployment Insurance Code proposed by both this bill and AB 2364. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 1032 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2364, in which case Section 2 of this bill shall not become operative.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 1256 of the Unemployment Insurance Code proposed by both this bill and AB 2364. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 1256 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2364, in which case Section 3 of this bill shall not become operative.