

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

5

SENATE BILL 757
Commerce Committee Substitute Adopted 5/31/05
House Committee Substitute Favorable 7/25/05
House Committee Substitute #2 Favorable 8/4/05
Fifth Edition Engrossed 8/22/05

Short Title: ESC Omnibus Act.

(Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY
LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-13(a) reads as rewritten:

"(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that -

(1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission ~~at regular intervals of not less than three weeks and not more than six weeks apart and~~ in accordance with such regulations as the Commission may prescribe;

(2) ~~He~~ The individual has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In

1 administering this proviso, benefits shall be paid or denied on a
2 payroll-week basis as established by the employing unit. A week of
3 unemployment due to a vacation as provided herein means any payroll
4 week within which the equivalent of three customary full-time
5 working days consist of a vacation period. For the purpose of this
6 subdivision, any unemployment which is caused by a vacation period
7 and which occurs in the calendar year following that within which the
8 vacation period begins shall be deemed to have occurred in the
9 calendar year within which such vacation period begins. For purposes
10 of this subdivision, no individual shall be deemed available for work
11 during any week that the individual tests positive for a controlled
12 substance if (i) the test is a controlled substance examination
13 administered under Article 20 of Chapter 95 of the General Statutes,
14 (ii) the test is required as a condition of hire for a job, and (iii) the job
15 would be suitable work for the claimant. The employer shall report to
16 the Commission, in accordance with regulations adopted by the
17 Commission, each claimant that tests positive for a controlled
18 substance under this subdivision. ~~For the purposes of this subdivision,
19 no individual shall be deemed available for work during any week in
20 which he is registered at and attending an established school, or is on
21 vacation during or between successive quarters or semesters of such
22 school attendance, or on vacation between yearly terms of such school
23 attendance. Except: (i) Any person who was engaged in full time
24 employment concurrent with his school attendance, who is otherwise
25 eligible, shall not be denied benefits because of school enrollment and
26 attendance. Except: (ii) Any otherwise qualified unemployed
27 individual who is attending a vocational school or training program
28 which has been approved by the Commission for such individual shall
29 be deemed available for work. However, any unemployment insurance
30 benefits payable with respect to any week for which a training
31 allowance is payable pursuant to the provisions of a federal or State
32 law, shall be reduced by the amount of such allowance which weekly
33 benefit amount shall be rounded to the nearest lower full dollar amount
34 (if not a full dollar amount). The Commission may approve such
35 training course for an individual only if:~~

36 a. 1. Reasonable employment opportunities for which the
37 individual is fitted by training and experience do not
38 exist in the locality or are severely curtailed;
39 2. The training course relates to an occupation or skill for
40 which there are expected to be reasonable opportunities
41 for employment; and
42 3. The individual, within the judgment of the Commission,
43 has the required qualifications and the aptitude to
44 complete the course successfully; or,

1 b. ~~Such approval is required for the Commission to receive the~~
2 ~~benefits of federal law.~~

3 a. An unemployed individual shall not be disqualified for
4 eligibility for unemployment compensation solely on the basis
5 that the individual is in school.

6 (4) No individual shall be deemed able to work under this subsection
7 during any week for which that person is receiving or is applying for
8 benefits under any other State or federal law based on his temporary
9 total or permanent total disability. Provided that if compensation is
10 denied to any individual for any week under the foregoing sentence
11 and such individual is later determined not to be totally disabled, such
12 individual shall be entitled to a retroactive payment of the
13 compensation for each week for which the individual filed a timely
14 claim for compensation and for which the compensation was denied
15 solely by reason of the foregoing sentence.

16 (5) The individual has participated in reemployment services, if the
17 Division referred the individual to these services after determining,
18 through use of a worker profiling system, that the individual would
19 likely exhaust regular benefits and would need reemployment services
20 to make a successful transition to new employment, unless the
21 individual establishes justifiable cause for failing to participate in the
22 services.

23 (6) An unemployed individual shall not be disqualified for eligibility for
24 unemployment compensation benefits solely on the basis that the
25 individual is only available for part-time work. If an individual
26 restricts his or her eligibility to part-time work, the individual may be
27 considered able and available to work if it is determined that all the
28 following conditions exist:

29 a. The claimant's monetary eligibility is based predominately on
30 wages from part-time work.

31 b. The claimant is actively seeking and is willing to accept work
32 under essentially the same conditions as existed while the
33 claimant's reported wages were accrued.

34 c. The claimant imposes no other restriction and is in a labor
35 market in which a reasonable demand exists for part-time
36 service.

37 This subdivision shall not be construed to amend subdivision (3) of
38 this subsection as it applies to students or G.S. 96-16 as it applies to
39 seasonal workers."

40 **SECTION 2.** G.S. 96-9(b)(3)d3. reads as rewritten:

41 "d3. The standard contribution rate set by subdivision (b)(1) of this
42 section applies to an employer unless the employer's account
43 has a credit balance. Beginning January 1, 1999, for any
44 calendar year that the training and reemployment contribution

in G.S. 96-6.1 does apply, not the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date, one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As But
 Much Less
 As Than

Rate Schedules (%)

| | | | A | B | C | D | E | F | G | H | I |
|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 0.0% | 0.2% | 2.70% | 2.70% | 2.70% | 2.70% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% |
| 0.2% | 0.4% | 2.70% | 2.70% | 2.70% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% |
| 0.4% | 0.6% | 2.70% | 2.70% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% |
| 0.6% | 0.8% | 2.70% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% |
| 0.8% | 1.0% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% |
| 1.0% | 1.2% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% |
| 1.2% | 1.4% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% |
| 1.4% | 1.6% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% |
| 1.6% | 1.8% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% |
| 1.8% | 2.0% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% |
| 2.0% | 2.2% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% |
| 2.2% | 2.4% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% |
| 2.4% | 2.6% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% |
| 2.6% | 2.8% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% |
| 2.8% | 3.0% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | |

| | | | | | | | | | | | |
|---|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1 | 3.0% | 3.2% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% |
| 2 | 3.2% | 3.4% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% |
| 3 | 3.4% | 3.6% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% | 0.06% |
| 4 | 3.6% | 3.8% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% | 0.06% | 0.05% |
| 5 | 3.8% | 4.0% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% | 0.06% | 0.05% | 0.04% |
| 6 | 4.0% | | | | | | | | | | |
| 7 | & | | | | | | | | | | |
| 8 | <u>OVER</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> |

SECTION 3. G.S. 96-9(a)(3)d5. reads as rewritten:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date, one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

| | | |
|------|------|--------------------|
| As | But | Rate Schedules (%) |
| Much | Less | |
| As | Than | |

| | A | B | C | D | E | F | G | H | I | |
|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 0.0% | 0.2% | 2.16% | 2.16% | 2.16% | 2.16% | 2.00% | 1.84% | 1.68% | 1.52% | 1.36% |

| | | | | | | | | | | | |
|----|--------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| 1 | 0.2% | 0.4% | 2.16% | 2.16% | 2.16% | 2.00% | 1.84% | 1.68% | 1.52% | 1.36% | 1.20% |
| 2 | 0.4% | 0.6% | 2.16% | 2.16% | 2.00% | 1.84% | 1.68% | 1.52% | 1.36% | 1.20% | 1.04% |
| 3 | 0.6% | 0.8% | 2.16% | 2.00% | 1.84% | 1.68% | 1.52% | 1.36% | 1.20% | 1.04% | 0.88% |
| 4 | 0.8% | 1.0% | 2.00% | 1.84% | 1.68% | 1.52% | 1.36% | 1.20% | 1.04% | 0.88% | 0.72% |
| 5 | 1.0% | 1.2% | 1.84% | 1.68% | 1.52% | 1.36% | 1.20% | 1.04% | 0.88% | 0.72% | 0.64% |
| 6 | 1.2% | 1.4% | 1.68% | 1.52% | 1.36% | 1.20% | 1.04% | 0.88% | 0.72% | 0.64% | 0.56% |
| 7 | 1.4% | 1.6% | 1.52% | 1.36% | 1.20% | 1.04% | 0.88% | 0.72% | 0.64% | 0.56% | 0.48% |
| 8 | 1.6% | 1.8% | 1.36% | 1.20% | 1.04% | 0.88% | 0.72% | 0.64% | 0.56% | 0.48% | 0.40% |
| 9 | 1.8% | 2.0% | 1.20% | 1.04% | 0.88% | 0.72% | 0.64% | 0.56% | 0.48% | 0.40% | 0.32% |
| 10 | 2.0% | 2.2% | 1.04% | 0.88% | 0.72% | 0.64% | 0.56% | 0.48% | 0.40% | 0.32% | 0.24% |
| 11 | 2.2% | 2.4% | 0.88% | 0.72% | 0.64% | 0.56% | 0.48% | 0.40% | 0.32% | 0.24% | 0.16% |
| 12 | 2.4% | 2.6% | 0.72% | 0.64% | 0.56% | 0.48% | 0.40% | 0.32% | 0.24% | 0.16% | 0.12% |
| 13 | 2.6% | 2.8% | 0.64% | 0.56% | 0.48% | 0.40% | 0.32% | 0.24% | 0.16% | 0.12% | 0.08% |
| 14 | 2.8% | 3.0% | 0.56% | 0.48% | 0.40% | 0.32% | 0.24% | 0.16% | 0.12% | 0.08% | 0.07% |
| 15 | 3.0% | 3.2% | 0.48% | 0.40% | 0.32% | 0.24% | 0.16% | 0.12% | 0.08% | 0.07% | 0.06% |
| 16 | 3.2% | 3.4% | 0.40% | 0.32% | 0.24% | 0.16% | 0.12% | 0.08% | 0.07% | 0.06% | 0.06% |
| 17 | 3.4% | 3.6% | 0.32% | 0.24% | 0.16% | 0.12% | 0.08% | 0.07% | 0.06% | 0.06% | 0.05% |
| 18 | 3.6% | 3.8% | 0.24% | 0.15% | 0.12% | 0.08% | 0.07% | 0.06% | 0.06% | 0.05% | 0.04% |
| 19 | 3.8% | 4.0% | 0.16% | 0.12% | 0.08% | 0.07% | 0.06% | 0.06% | 0.05% | 0.04% | 0.03% |
| 20 | 4.0% & | | | | | | | | | | |
| 21 | OVER | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00%" |

SECTION 4. G.S. 96-8 is amended by adding a new subdivision to read:
 "(28) Willfully. – For the purposes of this Chapter, the terms 'willfully' and
 'knowingly' shall have the same meaning."

SECTION 5. G.S. 96-9(c)(4)a. reads as rewritten:

"(c)

- ...
 - (4) Transfer of account. –
 - a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after

1 the transfer the successor employing unit continues to operate
2 the transferred portion of such organization, trade or business.
3 Provided, however, that the transfer of an account for the
4 purpose of computation of rates shall be deemed to have been
5 made prior to the computation date falling within the calendar
6 year within which the effective date of such transfer occurs and
7 the account shall thereafter be used in the computation of the
8 rate of the successor employer for succeeding years, subject,
9 however, to the provisions of paragraph b of this subdivision.
10 Provided there shall be no transfer of account when (i) a person
11 or entity is not an employer at the time of the acquisition and
12 (ii) the person or entity acquired the business or account
13 primarily for the purpose of obtaining a reduced rate of
14 contribution.

15 On or after August 1, 1988, whenever any individual, group
16 of individuals, or employing unit, who or which, in any manner
17 succeeds to or acquires all of the organization, trade, or
18 business of another employing unit as provided in G.S. 96-8,
19 subdivision (5), paragraph b, the account of the predecessor
20 shall be transferred as of the date of the acquisition of the
21 business to the successor employer for use in the determination
22 of his rate of contributions. Whenever any individual, group of
23 individuals, or employing unit, who or which, in any manner
24 succeeds to or acquires a distinct and severable portion of the
25 organization, trade, or business of another employing unit as
26 provided in G.S. 96-8, subdivision (5), paragraph b, that part of
27 the account of the predecessor which relates to the acquired
28 portion of the business shall, upon the mutual consent of the
29 parties concerned and approval of the Commission in
30 conformity with the regulations as prescribed therefor, be
31 transferred as of the date of acquisition of the business to the
32 successor employer for use in the determination of his rate of
33 contributions, provided application for transfer is made within
34 60 days after the Commission notifies the successor of his right
35 to request such transfer, otherwise the effective date of the
36 transfer shall be the first day of the calendar quarter in which
37 such application is filed, and that after the transfer the successor
38 employing unit continues to operate the transferred portion of
39 such organization, trade or business. On or after January 1,
40 2006, whenever part of an organization, trade, or business is
41 transferred between entities subject to substantially common
42 ownership, management, or control, the tax account shall be
43 transferred in accordance with regulations. However,
44 employing units transferring entities with any common

1 ownership, management, or control are not entitled to separate
2 and distinct employer status under this Chapter. Provided,
3 however, that the transfer of an account for the purpose of
4 computation of rates shall be deemed to have been made prior
5 to the computation date falling within the calendar year within
6 which the effective date of such transfer occurs and the account
7 shall thereafter be used in the computation of the rate of the
8 successor employer for succeeding years, subject, however, to
9 the provisions of paragraph b of this subdivision. No request for
10 a transfer of the account will be accepted and no transfer of the
11 account will be made if the request for the transfer of the
12 account is not received within two years of the date of
13 acquisition or notification by the Commission of the right to
14 request such transfer, whichever occurs later. However, in no
15 event will a request for a transfer be allowed if an account has
16 been terminated because an employer ceases to be an employer
17 pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the
18 date of notification."

19 **SECTION 6.** G.S. 96-18(b1) reads as rewritten:

20 "(b1) Except as provided in this subsection, the penalties and other provisions in
21 subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance
22 contributions under this Chapter to the same extent that they apply to taxes as defined in
23 G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions
24 with respect to unemployment insurance contributions as does the Secretary of Revenue
25 with respect to taxes as defined in G.S. 105-228.90(b)(7).

26 G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as
27 it applies to an income tax preparer. As used in this subsection, a "contribution tax
28 return preparer" is a person who prepares for compensation, or who employs one or
29 more persons to prepare for compensation, any return of tax imposed by this Chapter or
30 any claim for refund of tax imposed by this Chapter. For purposes of this definition, the
31 completion of a substantial portion of a return or claim for refund is treated as the
32 preparation of the return or claim for refund. The term does not include a person merely
33 because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii)
34 prepares a return or claim for refund of the employer, or an officer or employee of the
35 employer, by whom the person is regularly and continuously employed, (iii) prepares as
36 a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a
37 hearing regarding a proposed assessment.

38 The penalty in G.S. 105-236(7) applies with respect to unemployment insurance
39 contributions under this Chapter only when one of the following circumstances exist in
40 connection with the violation:

- 41 (1) Any employing units employing more than 10 employees.
- 42 (2) A contribution of more than two thousand dollars (\$2,000) has not
43 been paid.

1 (3) An experience rating account balance is more than five thousand
2 dollars (\$5,000) overdrawn.

3 If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection
4 exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the
5 offender is guilty of a Class 1 misdemeanor and each day the violation continues
6 constitutes a separate offense.

7 If the Commission finds that any person violated G.S. 105-236(9a) and is not subject
8 to a fraud penalty, the person shall pay a civil penalty of five hundred dollars (\$500.00)
9 per violation for each day the violations continue, plus the reasonable costs of
10 investigation and enforcement."

11 **SECTION 7.** Sections 2 and 3 of this act become effective October 1, 2005.
12 Section 6 of this act becomes effective December 1, 2005. The remainder of this act is
13 effective when it becomes law.