

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 439

Short Title: Empl. Security/Tech. Changes.

(Public)

Sponsors: Representative Robinson.

Referred to: Economic Expansion.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CHANGES TO THE EMPLOYMENT
3 SECURITY LAW.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 96-4(t)(5) reads as rewritten:

6 "(5) Privileged Status of Letters and Reports and Other Information
7 Relating to Administration of this Chapter. – All letters, reports,
8 communication, or any other matters, either oral or written, including
9 any testimony at any hearing, from the employer or employee to each
10 other or to the Commission or any of its agents, representatives, or
11 employees, which letters, reports, or other communication shall have
12 been written, sent, delivered, or made in connection with the
13 requirements of the administration of this Chapter, shall be absolutely
14 privileged communication in any civil or criminal proceedings except
15 proceedings pursuant to or involving the administration of this Chapter
16 and except proceedings involving child support and only for the
17 purpose of establishing the payment and amount of unemployment
18 compensation benefits. Nothing in this subsection shall be construed to
19 prohibit the Commission, upon written request and on a reimbursable
20 basis only, from disclosing information to any person from the records
21 of an adjudication or proceeding before an Appeals Referee, Deputy
22 Commissioner, or other hearing officer by whatever name called,
23 compiled for the purpose of resolving issues raised pursuant to the
24 Employment Security Law."

1 Sec. 2. G.S. 96-8 is amended by adding the following new subdivision to
2 read:

3 "(26) If two or more related corporations concurrently employ the same
4 individual and compensate the individual through a common
5 paymaster that is one of the related corporations, each related
6 corporation shall be considered to have paid as remuneration to the
7 individual only the amounts actually disbursed by it to the individual
8 and shall not be considered to have paid as remuneration to the
9 individual amounts actually disbursed to the individual by another of
10 the related corporations."

11 Sec. 3. G.S. 96-9(a) is amended by adding the following new subdivision to
12 read:

13 "(7) Effective with the quarter ending March 31, 1992, every employer
14 with 250 or more employees, and every person or organization that, as
15 agent, reports wages on a total of 250 or more employees on behalf of
16 one or more subject employers, shall file that portion of the
17 'Employer's Quarterly Tax and Wage Report' that contains the name,
18 social security number, and gross wages of each individual in
19 employment on magnetic tapes or diskettes in a format prescribed by
20 the Commission."

21 Sec. 4. G.S. 96-9(c)(2) reads as rewritten:

22 "(2) Charging of benefit payments. –

23 a. Benefits paid shall be allocated to the account of each base
24 period employer in the proportion that the base period wages
25 paid to an eligible individual in any calendar quarter by each
26 such employer bears to the total wages paid by all base period
27 employers during the base period, except as hereinafter
28 provided in paragraphs b, c, and d of this subdivision, G.S. 96-
29 9(d)(2)c, and 96-12(e)G. The amount so allocated shall be
30 multiplied by one hundred twenty percent (120%) and charged
31 to that employer's account. Benefits paid shall be charged to
32 employers' accounts upon the basis of benefits paid to claimants
33 whose benefit years have expired.

34 b. Any benefits paid to any claimant under a claim filed
35 for a period occurring after the date of such separations as are
36 set forth in this paragraph and based on wages paid prior to
37 the date of (i) the leaving of work by the claimant without
38 good cause attributable to the employer; (ii) the discharge of
39 claimant for misconduct in connection with his work; (iii) the
40 discharge of the claimant for substantial fault as that term
41 may be defined in G.S. 96-14; (iv) the discharge of the
42 claimant solely for a bona fide inability to do the work for
43 which he was hired but only where the claimant was hired
44 pursuant to a job order placed with a local office of the

1 Commission for referrals to probationary employment (with a
2 probationary period no longer than 100 days), which job
3 order was placed in such circumstances and which satisfies
4 such conditions as the Commission may by regulation
5 prescribe and only to the extent of the wages paid during such
6 probationary employment; (v) separations made disqualifying
7 under G.S. 96-14(2B) and (6A); or (vi) separation due to
8 leaving for disability or health condition shall not be charged
9 to the account of the employer by whom the claimant was
10 employed at the time of such separation; provided, however,
11 said employer promptly furnishes the Commission with such
12 notices regarding any separation of the individual from work
13 as are or may be required by the regulations of the
14 Commission.

15 No benefit charges shall be made to the account of any
16 employer who has furnished work to an individual who,
17 because of the loss of employment with one or more other
18 employers, becomes eligible for partial benefits while still being
19 furnished work by such employer on substantially the same
20 basis and substantially the same amount as had been made
21 available to such individual during his base period whether the
22 employments were simultaneous or successive; provided, that
23 such employer makes a written request for noncharging of
24 benefits in accordance with Commission regulations and
25 procedures.

26 No benefit charges shall be made to the account of any
27 employer where benefits are paid as a result of a decision by an
28 Adjudicator, Appeals Referee or the Commission if such
29 decision to pay benefits is ultimately reversed; nor shall any
30 such benefits paid be deemed to constitute an overpayment
31 under G.S. 96-18(g)(2), the provisions thereof notwithstanding.
32 Provided, an overpayment of benefits paid shall be established
33 in order to provide for the waiting period required by G.S. 96-
34 13(c).

- 35 c. Any benefits paid to any claimant who is attending a vocational
36 school or training program as provided in G.S. 96-13(a)(3) shall
37 not be charged to the account of the base period employer(s).
- 38 d. Any benefits paid to any claimant under the following
39 conditions shall not be charged to the account of the base period
40 employer(s):
- 41 1. The benefits are paid for unemployment due directly to a
42 major natural disaster, and
 - 43 2. The President has declared the disaster pursuant to the
44 Disaster Relief Act of 1970, 42 USCA 4401, **et seq.**, and

- 1 3. The benefits are paid to claimants who would have been
- 2 eligible for disaster unemployment assistance under this
- 3 Act, if they had not received unemployment insurance
- 4 benefits with respect to that unemployment.
- 5 e. 1. Any benefits paid to any claimant which are
- 6 based on previously uncovered employment which are
- 7 reimbursable by the federal government shall not be
- 8 charged to the experience rating account of any
- 9 employer.
- 10 2. For purposes of this paragraph previously uncovered
- 11 employment for which benefits are reimbursable by the
- 12 federal government means services performed before
- 13 July 1, 1978, in the case of a week of unemployment
- 14 beginning before July 1, 1978, or before January 1, 1978,
- 15 in the case of a week of unemployment beginning after
- 16 July 1, 1978, and to the extent that assistance under Title
- 17 II of the Emergency Jobs and Unemployment Assistance
- 18 Act of 1974 (SUA) was not paid to such individuals on
- 19 the basis of such service."

20 Sec. 5. G.S. 96-9(c)(4) reads as rewritten:

- 21 "(c) (4) Transfer of account. –
- 22 a. Whenever any individual, group of individuals, or employing
- 23 unit, who or which, in any manner succeeds to or acquires
- 24 substantially all or 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, the account
- 27 or that part of the account of the predecessor which relates to
- 28 the acquired portion of the business shall, upon the mutual
- 29 consent of the parties concerned and approval of the
- 30 Commission in conformity with the regulations as prescribed
- 31 therefor, be transferred as of the date of acquisition of the
- 32 business to the successor employer for use in the determination
- 33 of his rate of contributions, provided application for transfer is
- 34 made within 60 days after the Commission notifies the
- 35 successor of his right to request such transfer, otherwise the
- 36 effective date of the transfer shall be the first day of the
- 37 calendar quarter in which such application is filed, and that after
- 38 the transfer the successor employing unit continues to operate
- 39 the transferred portion of such organization, trade or business.
- 40 Provided, however, that the transfer of an account for the
- 41 purpose of computation of rates shall be deemed to have been
- 42 made prior to the computation date falling within the calendar
- 43 year within which the effective date of such transfer occurs and
- 44 the account shall thereafter be used in the computation of the

1 rate of the successor employer for succeeding years, subject,
2 however, to the provisions of paragraph b of this subdivision.

3 On or after August 1, 1988, whenever any individual, group
4 of individuals, or employing unit, who or which, in any manner
5 succeeds to or acquires substantially all of the organization,
6 trade, or business of another employing unit as provided in G.S.
7 96-8, subdivision (5), paragraph b, the account of the
8 predecessor shall be transferred as of the date of the acquisition
9 of the business to the successor employer for use in the
10 determination of his rate of contributions. Whenever any
11 individual, group of individuals, or employing unit, who or
12 which, in any manner succeeds to or acquires a distinct and
13 severable portion of the organization, trade, or business of
14 another employing unit as provided in G.S. 96-8, subdivision
15 (5), paragraph b, that part of the account of the predecessor
16 which relates to the acquired portion of the business shall, upon
17 the mutual consent of the parties concerned and approval of the
18 Commission in conformity with the regulations as prescribed
19 therefor, be transferred as of the date of acquisition of the
20 business to the successor employer for use in the determination
21 of his rate of contributions, provided application for transfer is
22 made within 60 days after the Commission notifies the
23 successor of his right to request such transfer, otherwise the
24 effective date of the transfer shall be the first day of the
25 calendar quarter in which such application is filed, and that after
26 the transfer the successor employing unit continues to operate
27 the transferred portion of such organization, trade or business.
28 Provided, however, that the transfer of an account for the
29 purpose of computation of rates shall be deemed to have been
30 made prior to the computation date falling within the calendar
31 year within which the effective date of such transfer occurs and
32 the account shall thereafter be used in the computation of the
33 rate of the successor employer for succeeding years, subject,
34 however, to the provisions of paragraph b of this subdivision.
35 No request for a transfer of the account will be accepted and no
36 transfer of the account will be made if the request for the
37 transfer of the account is not received within two years of the
38 date of acquisition or notification by the Commission of the
39 right to request such transfer, whichever occurs later. However,
40 in no event will a request for a transfer be allowed if an account
41 has been terminated because an employer ceases to be an
42 employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d)
43 regardless of the date of notification.

1 b. Notwithstanding any other provisions of this section, if the
2 successor employer was an employer subject to this Chapter
3 prior to the date of acquisition of the business, his rate of
4 contribution for the period from such date to the end of the then
5 current contribution year shall be the same as his rate in effect
6 on the date of such acquisition. If the successor was not an
7 employer prior to the date of the acquisition of the business he
8 shall be assigned a standard rate of contribution set forth in G.S.
9 96-9(b)(1) for the remainder of the year in which he acquired
10 the business of the predecessor; however, if such successor
11 makes application for the transfer of the account within 60 days
12 after notification by the Commission of his right to do so and
13 the account is transferred, or meets the requirements for
14 mandatory transfer, he shall be assigned for the remainder of
15 such year the rate applicable to the predecessor employer or
16 employers on the date of acquisition of the business, provided
17 there was only one predecessor or if more than one and the
18 predecessors had identical rates. In the event the rates of the
19 predecessor were not identical, the rate of the successor shall be
20 the highest rate applicable to any of the predecessor employers
21 on the date of acquisition of the business.

22 Irrespective of any other provisions of this Chapter, when an
23 account is transferred in its entirety by an employer to a
24 successor, the transferring employer shall thereafter pay the
25 standard rate of contributions of two and seven-tenths percent
26 (2.7%) and shall continue to pay at such rate until he qualifies
27 for a reduction, reacquires the account he transferred or
28 acquires the experience rating account of another employer, or
29 is subject to an increase in rate under the conditions prescribed
30 in G.S. 96-9(b)(2) and (3). However, when an account is
31 transferred in its entirety by an employer to a successor on or
32 after January 1, 1987, the transferring employer shall thereafter
33 pay the standard beginning rate of contributions of two and
34 twenty-five hundredths percent (2.25%) and shall continue to
35 pay at such rate until he qualifies for a reduction, reacquires the
36 account he transferred or acquires the experience rating account
37 of another employer, or is subject to an increase in rate under
38 the conditions prescribed in G.S. 96-9(b)(2) and (3).

39 c. In those cases where the organization, trade, or business of a
40 deceased person, or insolvent debtor is taken over and operated
41 by an administrator, administratrix, executor, executrix,
42 receiver, or trustee in bankruptcy, such employing units shall
43 automatically succeed to the account and rate of contribution of
44 such deceased person, or insolvent debtor without the necessity

1 of the filing of a formal application for the transfer of such
2 account."

3 Sec. 6. G.S. 96-10(j) reads as rewritten:

4 "(j) The Commission shall have the power to reduce or waive any penalty
5 provided in G.S. 96-10(a) or 96-10(g). The late filing penalty under G.S. 96-10(g) shall
6 be waived when the mailed report bears a postmark that discloses that it was mailed by
7 midnight of the due date but was addressed or delivered to the wrong State or federal
8 agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a)
9 and 96-10(g) shall be waived where the delay was caused by any of the following:

- 10 (1) The death or serious illness of the employer or a member of his
11 immediate family, or by the death or serious illness of the person in the
12 employer's organization responsible for the preparation and filing of
13 the report;
- 14 (2) Destruction of the employer's place of business or business records by
15 fire or other casualty;
- 16 (3) Failure of the Commission to furnish proper forms upon timely
17 application by the employer, by reason of which failure the employer
18 was unable to execute and file the report on or before the due date;
- 19 (4) The inability of the employer or the person in the employer's
20 organization responsible for the preparation and filing of reports to
21 obtain an interview with a representative of the Commission upon a
22 personal visit to the central office or any local office for the purpose of
23 securing information or aid in the proper preparation of the report,
24 which personal interview was attempted to be had within the time
25 during which the report could have been executed and filed as required
26 by law had the information at the time been obtained;
- 27 (5) The entrance of one or more of the owners, officers, partners, or the
28 majority stockholder into the Armed Forces of the United States, or
29 any of its allies, or the United Nations, provided that the entrance was
30 unexpected and is not the annual two weeks training for reserves; and
- 31 (6) Other circumstances where, in the opinion of the Chairman, the
32 Assistant Administrator, or their designees, the imposition of penalties
33 would be inequitable.

34 In the waiver of any penalty, the burden shall be upon the employer to establish to the
35 satisfaction of the Chairman, the Assistant Administrator, or their designees, that the
36 delinquency for which the penalty was imposed was due to any of the foregoing facts or
37 circumstances. Such waiver shall be valid and binding upon the Commission. No
38 employer shall receive a penalty waiver within 24 months succeeding its last penalty
39 waiver. The reason for any such reduction or waiver shall be made a part of the
40 permanent records of the employing unit to which it applies."

41 Sec. 7. This act is effective upon ratification.