

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 802

Short Title: ESC/Technical Changes.

(Public)

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Sponsors: Senators Marshall and Kerr.

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Referred to: Manufacturing and Labor.

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April 12, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE  
EMPLOYMENT SECURITY LAWS.

The General Assembly of North Carolina enacts:

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

"(5) Privileged Status of Letters and Reports and Other Information  
Relating to Administration of this Chapter. – All letters, reports,  
communication, or any other matters, either oral or written, including  
any testimony at any hearing, from the employer or employee to each  
other or to the Commission or any of its agents, representatives, or  
employees, which letters, reports, or other communication shall have  
been written, sent, delivered, or made in connection with the  
requirements of the administration of this Chapter, shall be absolutely  
privileged communication in any civil or criminal proceedings except  
proceedings pursuant to or involving the administration of this Chapter  
and except proceedings involving child support and only for the  
purpose of establishing the payment and amount of unemployment  
compensation benefits. Nothing in this subdivision shall be construed  
to prohibit the Commission, upon written request and on a  
reimbursable basis only, from disclosing information to any party to the  
~~proceeding~~ proceeding from the records of an adjudication or proceeding before an  
appeals referee, deputy commissioner, or other hearing officer by  
whatever name called, compiled for the purpose of resolving issues  
raised pursuant to the Employment Security Law."

1           Sec. 2. G.S. 96-14 is amended by adding the following new subsections to  
2 read:

3           "(1D) For the purposes of this Chapter, any claimant leaving work to  
4           accompany the claimant's spouse to a new place of residence where  
5           that spouse has secured work in a location that is too far removed for  
6           the claimant reasonably to continue his or her work shall serve a time  
7           certain disqualification for benefits for a period of five weeks  
8           beginning the first day of the first week after the disqualifying act  
9           occurs with respect to which week an individual files a claim for  
10           benefits.

11           (1E) For the duration of an individual's unemployment, beginning with the  
12           first day of the first week after the disqualifying act occurs with  
13           respect to which week an individual files a claim for benefits, if it is  
14           determined by the Commission that such individual is, at the time such  
15           claim is filed, unemployed because the individual, without good cause  
16           attributable to the employer, refused to return to work for a former  
17           employer when recalled from a layoff. As used in this subsection, the  
18           term 'layoff' means a temporary or permanent separation from work  
19           due to no work available for the individual at the time of separation  
20           from work."

21           Sec. 3. G.S. 96-14(10) reads as rewritten:

22           "(10) Any employee disqualified for the duration of his unemployment due  
23 to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that  
24 permanent disqualification removed if he meets the following three  
25 conditions:

- 26           a. Returns to work for at least five weeks and is paid cumulative  
27 wages of at least 10 times his weekly benefit amount;
- 28           b. Subsequently becomes unemployed through no fault of his  
29 own; and
- 30           c. Meets the availability requirements of the law.

31           Any time certain disqualification imposed by the provisions of  
32 subsections (1), (1D), and (2A) shall be removed by serving the  
33 disqualification imposed as provided by this subsection.

34           Provided for good cause shown the Commission in its  
35 discretion may as to any permanent disqualification provided in  
36 this Chapter reduce the disqualification period to a time certain  
37 but not less than five weeks. ~~For purposes of this subdivision~~  
38 ~~good cause shall include a claimant's leaving work in order to~~  
39 ~~accompany the claimant's spouse to a new place of residence where~~  
40 ~~that spouse has secured work in a location which is too far removed~~  
41 ~~for the claimant to continue his or her work.—~~The maximum  
42 amount of benefits due any individual whose permanent  
43 disqualification is changed to a time certain shall be reduced by

1 an amount determined by multiplying the number of weeks of  
2 disqualification by the weekly benefit amount.

3 Provided further, any permanent disqualification pursuant to  
4 the provisions of (1), (2), (3), (4), or (6A) shall terminate two  
5 years after the effective date of the beginning of said  
6 disqualification."

7 Sec. 4. G.S. 96-15(b)(2) reads as rewritten:

8 "(2) Adjudication. – When a protest is made by the claimant to the initial or  
9 monetary determination, or a question or issue is raised or presented as  
10 to the eligibility of a claimant under G.S. 96-13, or whether any  
11 disqualification should be imposed under G.S. 96-14, or benefits  
12 denied or adjusted pursuant to G.S. 96-18, the matter shall be referred  
13 to an adjudicator. The adjudicator may consider any matter, document  
14 or statement deemed to be pertinent to the issues, including telephone  
15 conversations, and after such consideration shall render a conclusion  
16 as to the claimant's benefit entitlements. The adjudicator shall notify  
17 the claimant and all other interested parties of the conclusion reached.  
18 The conclusion of the adjudicator shall be deemed the final decision of  
19 the Commission unless within 10 days after the date of notification or  
20 mailing of the conclusion, whichever is earlier, a written appeal is filed  
21 pursuant to such regulations as the Commission may adopt. The  
22 Commission shall be deemed an interested party for such purposes and  
23 may remove to itself or transfer to an appeals referee the proceedings  
24 involving any claim pending before an adjudicator.

25 Provided, any interested employer shall be allowed 10 days from  
26 the earlier of mailing or delivery of the notice of the filing of a claim  
27 against the employer's account to protest the claim and have the claim  
28 referred to an adjudicator for a decision on the question or issue raised.  
29 Provided further, no question or issue may be raised or presented by  
30 the Commission as to the eligibility of a claimant under G.S. 96-13, or  
31 whether any disqualification should be imposed under G.S. 96-14,  
32 after 20 days from the first day of the first week after the question or  
33 issue occurs with respect to which week an individual filed a claim for  
34 benefits. None of the provisions of this subsection shall have the force  
35 and effect nor shall the same be construed or interested as repealing  
36 any of the provisions of G.S. 96-18."

37 Sec. 5. G.S. 96-15(c) reads as rewritten:

38 "(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals  
39 referee shall set a hearing in which the parties are given reasonable opportunity to be  
40 heard. The conduct of hearings shall be governed by suitable regulations established by  
41 the Commission. Such regulations need not conform to common law or statutory rules  
42 of evidence or technical or formal rules of procedure but shall provide for the conduct  
43 of hearings in such manner as to ascertain the substantial rights of the parties. The  
44 hearings may be conducted by conference telephone call or other similar means

1 provided that if any party files with the Commission prior written objection to the  
2 telephone procedure, that party will be afforded an opportunity for an in-person hearing  
3 at such place in the State as the Commission by regulation shall provide. The appeals  
4 referee may affirm or modify the conclusion of the adjudicator or issue a new decision  
5 in which findings of fact and conclusions of law will be set out or dismiss an appeal  
6 when the appellant fails to appear at the appeals hearing to prosecute the appeal after  
7 having been duly notified of the appeals hearing. The evidence taken at the hearings  
8 before the appeals referee shall be recorded and the decision of the appeals referee shall  
9 be deemed to be the final decision of the Commission unless within 10 days after the  
10 date of notification or mailing of the decision, whichever is earlier a written appeal is  
11 filed pursuant to such regulations as the Commission may adopt. No person may be  
12 appointed as an appeals referee unless he or she possesses the minimum qualifications  
13 necessary to be a staff attorney eligible for designation by the Commission as a hearing  
14 officer under G.S. 96-4(m). No appeals referee in full-time permanent status may  
15 engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as  
16 appeals referee; violation of this prohibition shall be grounds for removal. Whenever an  
17 appeal is taken from a decision of the appeals referee, the appealing party shall submit a  
18 clear written statement containing the grounds for the appeal within the time allowed by  
19 law for taking the appeal, and if such timely statement is not submitted, an appeals  
20 referee may dismiss the appeal."

21           Sec. 6. Section 2 of Chapter 409 of the 1991 Session Laws reads as rewritten:  
22       "Sec 2. This act becomes effective October 1, ~~1991, 1991.~~ ~~and expires on June 30,~~  
23 ~~1993.~~"

24           Sec. 7. G.S. 96-18(g)(3) is amended by adding the following new subsection  
25 to read:

26       "(f) Overpayments to deceased claimants shall not be collected from the estate of  
27 the claimant and shall be removed as a debt of the deceased claimant from the records  
28 of the Commission."

29           Sec. 8. This act is effective upon ratification.