

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 945*

Short Title: Unemployment Insurance Technical Changes. (Public)

Sponsors: Representatives Howard and Setzer (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance

April 26, 2016

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES TO
THE UNEMPLOYMENT INSURANCE LAWS, AS RECOMMENDED BY THE JOINT
LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-11.7(c) reads as rewritten:

"(c) ~~Employer Number. — A new employer shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employer shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. The following assumptions apply in this subsection:~~Continuity of Control. — Any new employer that has continuity of control with an existing business enterprise shall continue to be the same employer as the existing business enterprise for the purposes of this Chapter as before the existence of the new employer. The Division shall assign any new employer with continuity of control to the account of the existing business enterprise. Any new employer with continuity of control shall not request or maintain an account with the Division other than the account of the existing business enterprise. If a new employer receives a new account and the Division subsequently finds that such new employer has continuity of control with an existing business enterprise, the Division shall recalculate the annual tax rates based on the combined annual account balances of the new employer and the existing business enterprise.

(1) ~~"Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.~~

(2) ~~A "continuity of control" will exist.~~ Continuity of control exists if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control includes changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship,



1 ~~partnership, corporation, association, estate, or to another limited liability~~
2 ~~company; a corporation to an individual proprietorship partnership, limited~~
3 ~~liability company, association, estate, or to another corporation or from any~~
4 ~~form to another form.~~ new employer. Control may occur by means of ownership
5 of the organization conducting the business enterprise, ownership of assets
6 necessary to conduct the business enterprise, security arrangements or lease
7 arrangements covering assets necessary to conduct the business enterprise, or a
8 contract when the ownership, stated arrangements, or contract provide for or
9 allow direction of the internal affairs or conduct of the business enterprise.
10 Control is not affected by changes in the form of a business enterprise,
11 reorganization of a business enterprise, or expansion of a business enterprise."

12 **SECTION 2.** G.S. 96-4(q) reads as rewritten:

13 "(q) The Board of Review after due notice shall have the right and power to hold and
14 conduct hearings for the purpose of determining the rights, status and liabilities of an employer.
15 The Board of Review shall have the power and authority to determine any and all questions and
16 issues of fact or questions of law that may arise under the Employment Security Law that may
17 affect the rights, liabilities and status of an employer including the right to determine the amount
18 of contributions, if any, which may be due the Division by any employer. Hearings may be before
19 the Board of Review and shall be held in the central office of the Board of Review or at any other
20 designated place within the State. They shall be open to the public and shall consist of a review of
21 the evidence taken by a hearing officer designated by the Board of Review and a determination of
22 the law applicable to that evidence. The Board of Review shall have the power to provide for the
23 taking of evidence by a hearing officer employed in the capacity of an attorney by the Department.
24 Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct
25 hearings and take evidence as is possessed by the Board of Review and such hearings shall be
26 recorded, and he shall transmit all testimony and records of such hearings to the Board for its
27 determination. All such hearings conducted by such hearing officer shall be scheduled and held in
28 any county in this State in which the employer resides, maintains a place of business, or conducts
29 business; however, the Board of Review may require additional testimony at any hearings held by
30 it at its office. From all decisions or determinations made by the Board of Review, any party
31 affected thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed
32 to appeal, the party shall within 10 days after notice of such decision or determination, file with
33 the Board of Review exceptions to the decision or the determination, which exceptions will state
34 the grounds of objection to the decision or determination. If any one of the exceptions shall be
35 overruled then the party may appeal from the order overruling the exceptions, and shall, within 10
36 days after the decision overruling the exceptions, give notice of his appeal. When an exception is
37 made to the facts as found by the Board of Review, the appeal shall be to the superior court in
38 term time but the decision or determination of the Board of Review upon such review in the
39 superior court shall be conclusive and binding as to all questions of fact supported by any
40 competent evidence. When an exception is made to any rulings of law, as determined by the Board
41 of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing
42 shall, within 10 days after the notice of appeal has been served, file with the Board of Review
43 exceptions to the decision or determination overruling the exception which statement shall assign
44 the errors complained of and the grounds of the appeal. Upon the filing of such statement the
45 Board of Review shall, within 30 days, transmit all the papers and evidence considered by it,
46 together with the assignments of errors filed by the appellant to a judge of the superior court
47 holding court or residing in some district in which such appellant either resides, maintains a place
48 of business or conducts business, or, unless the appellant objects after being given reasonable
49 opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the
50 30-day period specified herein may be extended by agreement of parties."

51 **SECTION 3.** This act is effective when it becomes law.