

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 757  
Commerce Committee Substitute Adopted 5/31/05  
House Committee Substitute Favorable 7/25/05

Short Title: ESC Omnibus Act.

(Public)

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Sponsors:

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Referred to:

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March 22, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY  
3 LAWS OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

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

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

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

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

15 (3) The individual is able to work, and is available for work: Provided  
16 that, unless temporarily excused by Commission regulations, no  
17 individual shall be deemed available for work unless he establishes to  
18 the satisfaction of the Commission that he is actively seeking work:  
19 Provided further, that an individual customarily employed in seasonal  
20 employment shall, during the period of nonseasonal operations, show  
21 to the satisfaction of the Commission that such individual is actively  
22 seeking employment which such individual is qualified to perform by  
23 past experience or training during such nonseasonal period: Provided  
24 further, however, that no individual shall be considered available for  
25 work for any week not to exceed two in any calendar year in which the  
26 Commission finds that his unemployment is due to a vacation. In  
27 administering this proviso, benefits shall be paid or denied on a  
28 payroll-week basis as established by the employing unit. A week of

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

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

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

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

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

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

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

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

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

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

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

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

39                "d3.    The standard contribution rate set by subdivision (b)(1) of this  
40                        section applies to an employer unless the employer's account  
41                        has a credit balance. Beginning January 1, 1999, for any  
42                        calendar year that the training and reemployment contribution  
43                        in G.S. 96-6.1 does apply, not the contribution rate of an  
44                        employer whose account has a credit balance is determined in

1 accordance with the rate set in the following Experience Rating  
 2 Formula table for the applicable rate schedule. The contribution  
 3 rate of an employer whose contribution rate is determined by  
 4 this Experience Rating Formula table shall be reduced by fifty  
 5 percent (50%) for any year in which the balance in the  
 6 Unemployment Insurance Fund on computation date equals or  
 7 exceeds eight hundred million dollars (\$800,000,000) on the  
 8 computation date one and ninety-five hundredths percent  
 9 (1.95%) of the gross taxable wages reported to the Commission  
 10 in the previous calendar year, and the fund ratio determined on  
 11 that date is less than five percent (5%) and shall be reduced by  
 12 sixty percent (60%) for any year in which the balance in the  
 13 Unemployment Insurance Fund on computation date equals or  
 14 exceeds eight hundred million dollars (\$800,000,000) on the  
 15 computation date, one and ninety-five hundredths percent  
 16 (1.95%) of the gross taxable wages as reported to the  
 17 Commission in the previous calendar year, and the fund ratio  
 18 determined on that date is five percent (5%) or more.

21 EXPERIENCE RATING FORMULA

22 When The Credit Ratio Is:

24	As	But	Rate Schedules (%)								
25	Much	Less									
26	As	Than	A	B	C	D	E	F	G	H	I
28	0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
29	0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
30	0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
31	0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
32	0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
33	1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
34	1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
35	1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
36	1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
37	1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
38	2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
39	2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
40	2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
41	2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
42	2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
43	3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
44	3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%

1	3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
2	3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3	3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4	4.0%										
5	&										
6	<u>OVER</u>		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

**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		
<u>As</u>	<u>Than</u>	

	A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
									1.04%

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

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 the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business.

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

13           On or after August 1, 1988, whenever any individual, group  
14           of individuals, or employing unit, who or which, in any manner  
15           succeeds to or acquires all of the organization, trade, or  
16           business of another employing unit as provided in G.S. 96-8,  
17           subdivision (5), paragraph b, the account of the predecessor  
18           shall be transferred as of the date of the acquisition of the  
19           business to the successor employer for use in the determination  
20           of his rate of contributions. Whenever any individual, group of  
21           individuals, or employing unit, who or which, in any manner  
22           succeeds to or acquires a distinct and severable portion of the  
23           organization, trade, or business of another employing unit as  
24           provided in G.S. 96-8, subdivision (5), paragraph b, that part of  
25           the account of the predecessor which relates to the acquired  
26           portion of the business shall, upon the mutual consent of the  
27           parties concerned and approval of the Commission in  
28           conformity with the regulations as prescribed therefor, be  
29           transferred as of the date of acquisition of the business to the  
30           successor employer for use in the determination of his rate of  
31           contributions, provided application for transfer is made within  
32           60 days after the Commission notifies the successor of his right  
33           to request such transfer, otherwise the effective date of the  
34           transfer shall be the first day of the calendar quarter in which  
35           such application is filed, and that after the transfer the successor  
36           employing unit continues to operate the transferred portion of  
37           such organization, trade or business. On or after January 1,  
38           2006, whenever part of an organization, trade, or business is  
39           transferred between entities subject to substantially common  
40           ownership, management, or control, the tax account shall be  
41           transferred in accordance with regulations. However,  
42           employing units transferring entities with any common  
43           ownership, management, or control are not entitled to separate  
44           and distinct employer status under this Chapter. Provided,

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

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

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

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

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

- 39                  (1) Any employing units employing more than 10 employees.
- 40                  (2) A contribution of more than two thousand dollars (\$2,000) has not  
41                  been paid.
- 42                  (3) An experience rating account balance is more than five thousand  
43                  dollars (\$5,000) overdrawn.



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

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

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