

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 160
HOUSE BILL 190

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAW TO CONFORM WITH FEDERAL REQUIREMENTS, TO MAKE TECHNICAL IMPROVEMENTS AND CORRECTIONS, AND TO REMOVE OUTDATED AND INCONSISTENT PROVISIONS FROM THE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-4(m), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended on the forty- seventh line by changing the word "appellee" to "appellant".

Sec. 2. G.S. 96-5(c), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by rewriting the fourth sentence to read as follows:

"Said fund shall be used by the Commission for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and shall also be used by the Commission for: (i) extensions, repairs, enlargements and improvements to buildings, and the enhancement of the work environment in buildings used for Commission business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious handling of Commission business; and (iii) the temporary stabilization of federal funds cash flow."

Sec. 3. G.S. 96-8(5)j., as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended: (1) by deleting the word "means" in the second line; (2) rewriting the first line to read as follows: "Prior to January 1, 1978,"; and (3) by adding the following paragraphs thereto:

"For purposes of this Chapter, 'institution of higher education' means an educational institution in this State which: (i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such certificate; (ii) is legally authorized in this State to provide a program of education beyond high school; (iii) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for credit toward such a degree or a program of training to prepare students for gainful employment in a recognized occupation; (iv) is a public or other nonprofit institution; and (v) notwithstanding any of the foregoing provisions of this subdivision, is a university, college, community college, or technical institute in the State.

For purposes of this Chapter, 'State hospital' means any institution licensed by the Department of Human Resources under Chapter 22 or Chapter 131 of the General Statutes."

Sec. 4. G.S. 96-8(5)k., as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by deleting the quotation marks and the word "employer" in the first line and the word "means" in the second line.

Sec. 5. G.S. 96-8(5)l. is repealed.

Sec. 6. G.S. 96-8(5)m. is repealed.

Sec. 7. G.S. 96-8(5)q., as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by adding the following at the end thereof:

"For purposes of this Chapter, 'secondary school' means any school not an institution of higher education as defined in G.S. 96-8(5j)."

Sec. 8. G.S. 96-8(10)a.1., as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by inserting the words "because of lack of work" after the comma and before the word "during" in the first line and by rewriting the last sentence to read as follows:

"If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date."

Sec. 9. G.S. 96-8(10)b.2., as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by inserting the words "because of lack of work" after the word "but" and before the word "during" in the first line.

Sec. 10. G.S. 96-8(17)c, as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by adding the following at the end thereof:

"As to claims filed on or after August 1, 1981, for claimants who do not have a benefit year in progress, 'benefit year' shall mean the fifty-two week period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. Provided, however, if the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits is either (i) the first day of a calendar quarter, or (ii) the second day of a calendar quarter followed by a February 29 within one year thereof, 'benefit year' shall mean the one-year period beginning with that first day of the week with respect to which the individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed only if such individual, at the time the claim is filed, is unemployed, and has been paid wages in his base period totaling at least six times the average weekly insured wage, obtained in accordance with G.S. 96-8(22) and equal to at least one and one-half times his high-quarter wages, which high-quarter wages must equal at least one and one-half times the average weekly insured wage, obtained in accordance with G.S. 96-8(22)."

Sec. 11. G.S. 96-8(17)d. is repealed.

Sec. 12. G.S. 96-8(25) is repealed.

Sec. 13. G.S. 96-9(c)(2)b., as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by changing the word "work" on the next to last line to the word "individual" and by changing the period in the last line to a semicolon and adding the following at the end thereof:

"provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures."

Sec. 14. G.S. 96-9(d)(2)c, as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is rewritten to read:

"Benefits paid shall be charged to the employer's account in accordance with G.S. 96-9(c)(2)a. and no benefits shall be noncharged except amounts equal to fifty percent (50%) of extended benefits paid and amounts equal to one hundred percent (100%) of benefits paid through error."

Sec. 15. G.S. 96-9(0)(4), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by adding the following immediately before the period: "except as provided in G.S. 96-9(d)(2)c."

Sec. 16. G.S. 96-10(g), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by rewriting the first paragraph thereof to read:

"Upon the motion of the Commission, any employer refusing to submit any report required under this Chapter, after 10 days' written notice sent by the Commission by registered or certified mail to the employer's last known address, may be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such report is properly submitted. When an execution has been returned to the Commission unsatisfied, and

the employer, after 10 days' written notice sent by the Commission by registered mail to the employer's last known address, refuses to pay the contributions covered by the execution, such employer shall upon the motion of the Commission be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such contributions have been paid."

Sec. 17. G.S. 96-12(b)(1)c. is repealed.

Sec. 18. G.S. 96-12(b)(3) is repealed.

Sec. 19. G.S. 96-12(c), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is rewritten to read as follows:

"Partial Weekly Benefit. Each eligible individual whose benefit year begins after December 31, 1977, who is 'partially unemployed' or 'part totally unemployed' as defined in G.S. 96-8(10)b. and c. respectively, and who files a valid claim, shall be paid benefits with respect to such week or weeks in an amount figured to the nearest multiple of one dollar (\$1.00) which is equal to the difference between his weekly benefit amount and that part of the renumeration payable to him for such week which is in excess of ten percent (10%) of the average weekly wage in the high quarter of his base period."

Sec. 20. G.S. 96-12(e), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by adding a new subdivision "I." to read: "For weeks of unemployment beginning on or after June 1, 1981, a claimant who is filing an interstate claim under the interstate benefit payment plan shall be eligible for extended benefits for no more than two weeks when there is a State 'off indicator in the state where the claimant files."

Sec. 21. G.S. 96-12(e)C.2., as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by adding the following to the end thereof: "Provided, however, that for purposes of disqualification for extended benefits for weeks of unemployment beginning after March 31, 1981, the term 'suitable work' means any work which is within the individual's capabilities to perform if: (i) the gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in Section 501 (C) (17) (D) of the Internal Revenue Code of 1954) payable to such individual for such week; and (ii) the gross wages payable for the work equal the higher of the minimum wages provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended (without regard to any exemption), or the State minimum wage; and (iii) the work is offered to the individual in writing and is listed with the State employment service; and (iv) the considerations contained in G.S. 96-14(3) for determining whether or not work is suitable are applied to the extent that they are not inconsistent with the specific requirements of this subdivision; and (v) the individual cannot furnish evidence satisfactory to the Commission that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good, but if the individual submits evidence which the Commission deems satisfactory for this purpose, the determination of whether or not work is suitable with respect to such individual shall be made in accordance with G.S. 96-14(3) without regard to the definition contained in this subdivision. Provided, further, that no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth in this subdivision, but the employment service shall refer any individual claiming extended benefits to any work which is deemed suitable hereunder. Provided, further, that any individual who has been disqualified for voluntarily leaving employment, being discharged for misconduct, or refusing suitable work under G.S. 96-14 and who has had the disqualification terminated, shall have such disqualification reinstated when claiming extended benefits unless the termination of the disqualification was based upon employment subsequent to the date of the disqualification."

Sec. 22. G.S. 96-12(e)C, as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by adding at the end thereof a new subdivision "3." to read: "After March 31, 1981, he has not failed either to apply for or to accept an offer of

suitable work, as defined in G.S. 96-12(e)C2., to which he was referred by an employment office of the Commission, and he has furnished the Commission with tangible evidence that he has actively engaged in a systematic and sustained effort to find work. If an individual is found to be ineligible hereunder, he shall be ineligible beginning with the week in which he either failed to apply for or to accept the offer of suitable work or failed to furnish the Commission with tangible evidence that he has actively engaged in a systematic and sustained effort to find work and such individual shall continue to be ineligible for extended benefits until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times his weekly benefit amount."

Sec. 23. G.S. 96-12(e)G., as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended: (1) in the first paragraph by changing the word "contributions" in the third and eighth lines to the word "taxes", and (2) by rewriting the first sentence of the second paragraph to read as follows: "On and after January 1, 1978, the federal portion of any extended benefits shall not be charged to the account of any employer who pays taxes as required by this Chapter but the State portion of such extended benefits shall be charged to the account of such employer."

Sec. 24. G.S. 96-13(a)(3), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by deleting all of the language and punctuation beginning with and including the word "Provided" on the twentieth line through the period on the thirtieth line.

Sec. 25. G.S. 96-13(b)(2), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended in the fourteenth line by deleting the comma and inserting between the words "implied" and "to" the following language: "or a reasonable assurance".

Sec. 26. G.S. 96-14(9), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by adding the following at the end thereof:

"The amount of benefits payable to an individual for any week which begins after July 1, 1981. and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by the amounts of any such pension, retirement or retired pay, annuity, or other payment contributed to in part or in total by the individual's base period employers; provided, however, that the amount of all payments received by an individual under the Social Security Act and the Railroad Retirement Act shall be deducted from the individual's benefit amount."

Sec. 27. G.S. 96-15(b)(2), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is rewritten to read:

"Adjudication. When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Commission unless within 10 days after the date of notification or mailing of the conclusion, whichever is earlier, an appeal is initiated. The Commission shall be deemed an interested party for such purposes and may remove to itself or transfer to an Appeals Referee the proceedings involving any claim pending before an adjudicator."

Sec. 28. G.S. 96-15(c), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended: (1) by deleting the period and adding the following at

the end of the second sentence: "or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing.", (2) by deleting the second "of and first comma therein and inserting after the second comma and before the word "further" the following: "whichever is earlier.", (3) in the eleventh line by changing the word "finally" to the word "ultimately." and (4) by changing the last sentence therein to read as follows: "Whenever an appeal is taken from a decision of the Appeals Referee, the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, an Appeals Referee may dismiss the appeal."

Sec. 29. G.S. 96-15(f), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended: (1) in the third and fourth lines by changing the word "rules" to the word "regulations" and (2) by changing the word "tribunal" in the last sentence to the word "referee".

Sec. 30. G.S. 96-15(h), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended: (1) in the third line by inserting after the comma and before the word "and" the following: "whichever is earlier," and (2) by adding the following sentence at the end thereof: "If a notice of appeal is filed but not in a timely fashion, the Commission may dismiss the appeal."

Sec. 31. G.S. 96-15(i), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended: (1) by deleting the entire second sentence, (2) by rewriting the third sentence to read as follows: "If a timely notice of appeal has been filed as provided in G.S. 96-15(h), the appeal shall be filed and heard in the Superior Court of Wake County, unless the appellant objects in writing to such venue, after being afforded a reasonable opportunity to do so, in which case the appeal shall be transferred to the Superior Court in the county of the appellant's residence or principal place of business.", (3) by inserting the following new sentence between the existing fifth and sixth sentences thereof: "If such statement is not filed in a timely fashion, the Commission may dismiss the appeal.", (4) on the eighteenth line by changing the language up to the period to read as follows: "from the time the appeal is perfected", and (5) by changing the word "it" before the comma in the twenty-first line to the word "them".

Sec. 32. G.S. 96-15(j), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended: (1) in the second sentence by changing the word "his" to the following: "the individual's (2) in the third sentence by changing the word "deputy" to the word "adjudicator," by changing the word "tribunal" to the word "referee" and inserting after the word "Commission" and before the word "shall" the following: "or Deputy Commissioner".

Sec. 33. G.S. 96-18(g)(2), as it appears in the 1979 Cumulative Supplement to Volume 2C of the General Statutes, is amended by rewriting the last sentence to read: "No such recovery or recoupment of such sum may be initiated after three years from the last day of the year in which the overpayment occurred."

Sec. 34. This act is effective upon ratification, except Section 26 of this act which shall become effective July 1, 1981.

In the General Assembly read three times and ratified, this the 1st day of April, 1981.