

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 625
HOUSE BILL 737

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAW TO ASSURE
FEDERAL COMPLIANCE AND OTHER TECHNICAL AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-12(e)A.(4)a. is amended by deleting the words "13 weeks" and substituting "13-week period ending in each of the preceding two calendar years,".

Sec. 2. The last sentence of G.S. 96-13(a)(3) is rewritten to read:

"The Commission may approve such training course for an individual only if:

1. a. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;
b. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and
c. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,
2. Such approval is required for the Commission to receive the benefits of federal law."

Sec. 3. G.S. 96-13(a) is amended by adding a new subsection to read:

"(4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability."

Sec. 4. G.S. 96-13(b)(1) is rewritten to read:

"The payment of benefits to any individual based on services for nonprofit organizations, hospitals, State hospitals and State institutions of higher education, other institutions of higher education, or secondary schools and subdivisions of secondary schools subject to this Chapter shall be in the same manner and under the same conditions of the laws of this Chapter as applied to individuals whose benefit rights are based on other services subject to this Chapter. Except that with respect to services in the educational institutions listed above, benefits shall not be payable based on such services for any week commencing during the period between two successive academic years, or during a similar period between two regular terms, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts, written, oral or implied, or a reasonable assurance to perform services in any such capacity for such educational institution for both such academic years or both

such terms. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of the foregoing sentence. The provisions of this subsection relating to the denial of benefits for any week of unemployment commencing during the period between two successive academic years or during a similar period between two regular terms shall apply to an individual who performs services on a part-time or substitute basis."

Sec. 5. G.S. 96-13(b)(2) is repealed.

Sec. 6. G.S. 96-14 is amended by adding a new sentence at the end of subsection (2) to read:

"Misconduct connected with the work is defined as conduct evincing such wilful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.", and further by adding a new subsection after subsection (2) to read: "(2A) For a period of not less than four nor more than 13 weeks beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct. Substantial fault is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) nonintentional mistakes made by the employee, nor (3) failures to perform work because of insufficient skill, ability, or equipment. Upon a finding of discharge under this subsection, the individual shall be disqualified for a period of nine weeks unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the Commission shall not be disturbed by a reviewing court except upon a finding of plain error."

Sec. 7. The last sentence of G.S. 96-12(e)C.2 is amended by adding the words "or substantial fault" after the words "discharged for misconduct".

Sec. 8. G.S. 96-14(8) is rewritten to read:

"For any week with respect to which he has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to

the weeks in the period on such a pro rata basis as the Commission may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-12, the claimant shall be entitled to receive such reduced payment if the claimant was otherwise eligible."

Sec. 9. The first sentence of G.S. 96-8(13)a. is rewritten to read:

"Wages' shall include commissions and bonuses and any sums paid to an employee by an employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency or by private agreement, consent or arbitration for loss of pay by reason of discharge and the cash value of all remuneration in any medium other than cash."

Sec. 10. The first paragraph of G.S. 96-15(b)(1) is rewritten to read:

"Initial Determination. A representative designated by the Commission shall promptly examine the claim and shall determine whether or not the claim is valid. If the claim is determined to be not valid for any reason other than lack of base period earnings, the claim shall be referred to an Adjudicator for a decision as to the issues presented. If the claim is determined to be valid, a monetary determination shall be issued showing the week with respect to when benefits shall commence, the weekly benefit amount payable, and the potential maximum duration thereof. The claimant shall be furnished a copy of such monetary determination showing the amount of wages paid him by each employer during his base period and the employers by whom such wages were paid, his benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to him for unemployment during the benefit year. When a claim is not valid due to lack of earnings in his base period, the determination shall so designate. The claimant shall be allowed 10 days from the earlier of mailing or delivery of his monetary determination to him within which to protest his monetary determination and upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall be referred to the Chief Deputy Commissioner or his designee for a decision as to the issues presented. All base period employers, as well as the most recent employer of a claimant on a temporary layoff, shall be notified upon the filing of a claim which establishes a benefit year."

Sec. 11. The fourth sentence of G.S. 96-15(b)(2) is amended by deleting the words "an appeal is initiated" and substituting "a written appeal is filed pursuant to such regulations as the Commission may adopt".

Sec. 12. The third sentence of G.S. 96-15(c) is amended by deleting "further appeal is initiated" and substituting "a written appeal is filed pursuant to such regulations as the Commission may adopt", and further by rewriting the fourth sentence to read: "No person may be appointed as an Appeals Referee unless he possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Commission as a hearing officer under G.S. 96-4(m)."

Sec. 13. G.S. 96-15(h) is rewritten to read:

"Appeal to Courts. Any decision of the Commission in the absence of an appeal therefrom as herein provided, shall become final 30 days after the date of notification or mailing thereof, whichever is earlier, and judicial review thereof shall be permitted only

after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission as provided by this Chapter and has filed notice of appeal as hereinafter provided. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who has been designated by it for that purpose. If a notice of appeal is filed, but not in a timely fashion, the court shall dismiss the appeal upon the motion of the Commission. In order to obtain judicial review under this Chapter, the person seeking review must file a petition in the superior court of the county in which the appellant resides or has his principal place of business.

The petition shall explicitly state what exceptions are taken to the decision or procedure of the Commission and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by personal service or by registered mail upon the Commission and upon all who were parties of record to the Commission proceedings. Names and addresses of such parties shall be furnished to the petitioner by the Commission upon request. Any party to the Commission proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the Commission shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional cost as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

Sec. 14. G.S. 96-15(i) is rewritten to read:

"Appeal Proceedings. The decision of the Commission shall be final, subject to judicial review as herein provided. If a timely petition for review has been filed as provided in G.S. 96- 15(h), the court shall have power to make party defendant any other party which it may deem necessary or proper to a just and fair determination of the case. The Commission may, in its discretion, certify to the reviewing court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the Commission as to the facts, if there is evidence to support them and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all civil cases. An appeal may be taken from the judgment of the superior court, as provided in civil cases. The Commission shall have the right of appeal to the appellate division from a decision or judgment of the superior court and for such purpose shall be deemed to be an aggrieved party. No bond shall be required of the Commission upon such appeal. Upon the final determination of the case or proceeding, the Commission shall enter an order in accordance with such determination. When an appeal has been entered to any judgment,

order, or decision of the court below, no benefits shall be paid pending a final determination of the cause, except in those cases in which the final decision of the Commission allowed benefits."

Sec. 15. G.S. 96-18 is amended by deleting subsections (d) and (f) and by rewriting subsection (g) to read:

"(g) (1) Any person who, under subsection (e) above, has been held ineligible for benefits and who, because of those same acts or omissions has received any sum as benefits under this Chapter to which he was not entitled, shall be liable to repay any such sum to the Commission as provided in subparagraph (3) below, provided such decision under subsection (e) has been made within two years of the last such act or omission.

(2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which he was not entitled for any reason (including errors on the part of any representative of the Commission) other than subparagraph (1) above shall be liable to repay such sum to the Commission as provided in subparagraph (3) below, provided 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.

(3) The Commission may collect the overpayments provided for in this subsection by one or more of the following procedures as the Commission may, except as provided herein, in its sole discretion choose:

a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the Commission, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Chapter.

b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for same, and after due notice and reasonable opportunity for hearing (if a hearing on the merits of the claim has not already been had) the Commission, under the hand of its Chairman, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the Commission has reason to believe such claimant has property located; such certificate and/or copies

thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said claimant may own in said county, with the same force and effect as a judgment rendered by the superior court. The Commission shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission, and when so forwarded and in the hands of such sheriff or agent of the Commission, shall have all the force and effect of an execution issued to such sheriff or agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. The Commission is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or a duly authorized agent of the Commission in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Commission, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Commission, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case, no agent of the Commission shall have the authority to serve any executions or make any collections therein in such county. A return of such execution or alias execution, shall be made to the Commission, together with all monies collected thereunder, and when such order, execution or alias is referred to the agent of the Commission for service, the said agent of the Commission shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Commission to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Commission for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of execution. If any sheriff of this State or any agent of the Commission who is charged with the duty of serving executions shall wilfully fail, refuse or

neglect to execute any order directed to him by the said Commission and within the time provided by law, the official bond of such sheriff or of such agent of the Commission shall be liable for the overpayments and costs due by the claimant. Additionally, the Commission or its designated representatives in the collection of overpayments shall have the powers enumerated in G.S. 96-10(b)(2) and

(3).

- c. Any person who has been found by the Commission to have been overpaid under subparagraph (1) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter.
- d. Any person who has been found by the Commission to have been overpaid under subparagraph (2) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter in such amounts as the Commission may by regulation prescribe but no such benefit payable for any week shall be reduced by more than fifty percent (50%) of that person's weekly benefit amount."

Sec. 16. G.S. 96-4 is amended by adding a new subsection to read:

"(s) Upon a finding of good cause, the Commission shall have the power in its sole discretion to forgive, in whole or in part, any overpayment arising under G.S. 96-18(g)(2)."

Sec. 17. This act shall become effective August 1, 1983.

In the General Assembly read three times and ratified, this the 27th day of June, 1983.