

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  
House Committee Substitute #2 Favorable 8/4/05

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

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

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

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

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

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

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

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

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

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

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

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

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

41           "d3. The standard contribution rate set by subdivision (b)(1) of this  
42           section applies to an employer unless the employer's account  
43           has a credit balance. Beginning January 1, 1999, for any  
44           calendar year that the training and reemployment contribution

in G.S. 96-6.1 does apply, not 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 as 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  
 Much Less  
 As Than

Rate Schedules (%)

			A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	

1	3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
2	3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3	3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
4	3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
5	3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
6	4.0%										
7	&										
8	<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>	<u>0.00%</u>

**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	
As	Than	

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

1	0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
2	0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
3	0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
4	0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
5	1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
6	1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
7	1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
8	1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
9	1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
10	2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
11	2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
12	2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
13	2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
14	2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
15	3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
16	3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
17	3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
18	3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
19	3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
20	4.0% &										
21	OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

**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

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

15 On or after August 1, 1988, whenever any individual, group  
16 of individuals, or employing unit, who or which, in any manner  
17 succeeds to or acquires all of the organization, trade, or  
18 business of another employing unit as provided in G.S. 96-8,  
19 subdivision (5), paragraph b, the account of the predecessor  
20 shall be transferred as of the date of the acquisition of the  
21 business to the successor employer for use in the determination  
22 of his rate of contributions. Whenever any individual, group of  
23 individuals, or employing unit, who or which, in any manner  
24 succeeds to or acquires a distinct and severable portion of the  
25 organization, trade, or business of another employing unit as  
26 provided in G.S. 96-8, subdivision (5), paragraph b, that part of  
27 the account of the predecessor which relates to the acquired  
28 portion of the business shall, upon the mutual consent of the  
29 parties concerned and approval of the Commission in  
30 conformity with the regulations as prescribed therefor, be  
31 transferred as of the date of acquisition of the business to the  
32 successor employer for use in the determination of his rate of  
33 contributions, provided application for transfer is made within  
34 60 days after the Commission notifies the successor of his right  
35 to request such transfer, otherwise the effective date of the  
36 transfer shall be the first day of the calendar quarter in which  
37 such application is filed, and that after the transfer the successor  
38 employing unit continues to operate the transferred portion of  
39 such organization, trade or business. On or after January 1,  
40 2006, whenever part of an organization, trade, or business is  
41 transferred between entities subject to substantially common  
42 ownership, management, or control, the tax account shall be  
43 transferred in accordance with regulations. However,  
44 employing units transferring entities with any common

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

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

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

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

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

- 41                    (1) Any employing units employing more than 10 employees.
- 42                    (2) A contribution of more than two thousand dollars (\$2,000) has not  
43                    been paid.



1           (3) An experience rating account balance is more than five thousand  
2           dollars (\$5,000) overdrawn.

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

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

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