

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 197
HOUSE BILL 483

AN ACT TO ASSURE COMPLIANCE OF THE NORTH CAROLINA
EMPLOYMENT SECURITY LAW WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-4(e) is amended by rewriting it to read as follows:

"(e) Advisory Councils. The Governor shall appoint a State Advisory Council composed of men and women representing employers, employees, and the general public, in equal numbers. The Chairman of the Commission shall be a member of the State Advisory Council and shall serve as its chairman. There shall be 15 members of the Council (other than its chairman) who shall each be appointed for a term of four years. A quorum of the State Advisory Council shall consist of the chairman, or such appointed member as he may designate, plus one half of the total appointed members. The function of the Council shall be to aid the Commission in formulating policies and discussing problems related to the administration of this Chapter. Each member of the State Advisory Council attending meetings of the Council shall be paid the same amount per diem for his services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office, and his actual mileage and subsistence at the same rate allowed to State officials."

Sec. 2. G.S. 96-6 is amended by adding a new subsection to read:

"(f) Any interest required to be paid on advances under Title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly, from amounts in the unemployment insurance fund."

Sec. 3. G.S. 96-8(13) is rewritten to read:

"(13)a. 'Wages' shall include commissions, bonuses, any sums paid to an employee by an employer pursuant to an order of any court, the National Labor Relations Board, or 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. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Commission; provided, if the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to unemployment benefits only shall be

determined in such manner as may by authorized regulations be prescribed. The regulations shall, so far as possible, secure results reasonably similar to those that would prevail if the individual were paid his wages at regular intervals. The term 'wages' shall not include the amount of any payment with respect to services to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical and hospitalization expenses in connection with sickness or accident disability or (iv) death. However, in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, only payments which are received under a worker's compensation law shall be excluded from the term 'wages'. Furthermore, the term 'wages' shall not include payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.

b. 'Wages' shall not include any payment made to, or on behalf of, an employee or his beneficiary from or to a trust which qualifies under the conditions set forth in Sections 401(a)(1) and (2) of the Internal Revenue Code of 1954, or under or to an annuity plan which at the time of the payment meets the requirements of Sections 401(a)(3), (4), (5) and (6) of the Code and exempt from tax under Section 501(a) of the Code at the time of the payment, unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as beneficiary of the trust.

c. For the purposes of this Chapter, the term 'wages' includes the reasonable amount of gratuities, including tips, that an employee receives directly from a customer and reports to the employer and that the employer considers as salary for the purpose of meeting minimum wage requirements. Effective January 1, 1987, and as long as the Federal Unemployment Tax Act, 26 USC 3301 et. seq., contains materially identical requirements, the term 'wages' includes tips which are:

- (1) received while performing services that constitute employment; and
- (2) included in a written statement furnished to the employer pursuant to the requirements of the Internal Revenue Code."

Sec. 4. G.S. 96-13(a)(3) is amended by rewriting the seventh sentence to read:

"Except: (i) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work."

Sec. 5. G.S. 96-13(b)(1), as amended by Chapter 53, 1985 Session Laws, is amended by deleting the last four sentences and substituting the following:

"Except that with respect to services in the educational institutions listed above:

(i) In an instructional, research, or principal administrative capacity, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms, or, when an agreement provides instead for a similar period between two regular but not successive

terms, during that period, to any individual if he performs such services in the first of the academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms; and,

(ii) In any other capacity for an educational institution:

(I) compensation shall be denied on the basis of such services for any week which commences during a period between two successive academic years or terms if the individual performs such services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of the academic years or terms, except that

(II) if compensation is denied to any individual for any week under subclause (I) and the individual was not offered an opportunity to perform such services for the educational institution for the second of the academic years or terms, the 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 subclause (I); and,

(iii) With respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following the vacation period or holiday recess; and,

(iv) With respect to any services described in clause (i) or (ii), compensation on the basis of services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term 'educational service agency' means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions; and,

(v) With respect to any services to which G.S. 96-13(b)(1) applies, if such services are provided to or on behalf of an educational institution, compensation shall be denied under the same circumstances as described in clauses (i) through (iv)."

Sec. 6. G.S. 96-4(g)(1) is amended by deleting the last four sentences of that subsection.

Sec. 7. G.S. 96-4 is amended by adding at the end a new subsection (t) to read:

"(t) Confidentiality of Records, Reports, and Information Obtained from Claimants and Employers.

(I) Confidentiality of Information Contained in Records and Reports. (1) Except as hereinafter otherwise provided, it shall be unlawful for any person to obtain, disclose, or use, or to authorize or permit the use of any information which is obtained from any employing unit or individual pursuant to the administration of this Chapter. (2) Any

claimant or employer or their legal representatives shall be supplied with information from the records of the Employment Security Commission to the extent necessary for the proper presentation of claims or defenses in any proceeding under this Chapter. Notwithstanding any other provision of law, any claimant may be supplied, subject to restrictions as the Commission may by regulation prescribe, with any information contained in his payment record or on his most recent monetary determination, and any individual, as well as any interested employer, may be supplied with information as to the individual's potential benefit rights from claim records. (3) Subject to restrictions as the Commission may by regulation provide, information from the records of the Employment Security Commission may be made available to any agency or public official for any purpose for which disclosure is required by statute or regulation. (4) The Commission may, in its sole discretion, permit the use of information in its possession by public officials in the performance of their public duties.

- (II) Job Service Information. (1) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the Commission have agreed upon in writing. (2) The Employment Service Division shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (3) The Labor Market Information Division shall collect, collate, and publish statistical and other information relating to the work under the Commission's jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the Commission's opinion may make further legislation desirable. (4)

Except as provided by Commission regulation, any information published pursuant to this subsection (II) shall not be published in any manner revealing the identity of the applicant or the employing unit.

- (III) Penalties for Disclosure or Improper Use. Any person violating any provision of this section may be fined not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200.00), or imprisoned for not longer than 90 days, or both.

- (IV) Regulations. The Commission may provide by regulation for procedures by which requests for information will be considered and the methods by which such information may be disclosed. The Commission is authorized to provide by regulation for the assessment of fees for securing and copying information released under this section.
- (V) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to the Commission or any of its agents, representatives, or employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter.
- (VI) Nothing in this subsection (t) shall operate to relieve any claimant or employing unit from disclosing any information required by this Chapter or by regulations promulgated thereunder.
- (VII) Nothing in this subsection (t) shall be construed to prevent the Commission from allowing any individual or entity to examine and copy any report, return, or any other written communication made by that individual or entity to the Commission, its agents, or its employees."

Sec. 8. G.S. 96-23 is repealed.

Sec. 9. G.S. 96-15(j) is repealed.

Sec. 10. This act shall become effective July 1, 1985.

In the General Assembly read three times and ratified, this the 17th day of May, 1985.