

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 552  
HOUSE BILL 567

AN ACT TO REMOVE OBSOLETE PROVISIONS AND TO MAKE TECHNICAL,  
CLARIFYING, AND OTHER AMENDMENTS TO THE EMPLOYMENT  
SECURITY LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8(5)c. is repealed. Sec. 2. G.S. 96-8(5)g. is repealed.  
Sec. 3. G.S. 96-8(5)i. is repealed. Sec. 4. G.S. 96-8(13) is amended by adding a new  
subdivision (d) to read as follows:

"(d) Wages shall not include the amount of any payment, including any amount  
paid into a fund to provide for such payment, made to, or on behalf of, an employee  
under a plan or system established by an employer or others which makes provision for  
employees generally, or for a class or group of employees, for the purpose of  
supplementing unemployment benefits, provided that the plan has been approved by the  
Commission under such reasonable regulations as it shall promulgate."

Sec. 5. G.S. 96-9(a)(4) is amended by deleting the phrase "G.S. 96-9(d)" and  
substituting the phrase "G.S. 96-9(f)".

Sec. 6. G.S. 96-9(a)(5) is amended in the second and third paragraphs by  
deleting the phrase "the FUTA" each time it appears and substituting the phrase "this  
State's".

Sec. 7. G.S. 96-9(b)(2)c is amended in the second paragraph by deleting the  
word "solely" and substituting the phrase "in whole or in part".

Sec. 8. G.S. 96-11(d) is amended by rewriting the first sentence to read:

"An employer who has not paid any covered wages for a period of two consecutive  
calendar years shall cease to be an employer subject to this Chapter."

Sec. 9. G.S. 96-12(c) is amended by adding a new sentence at the end to  
read:

"The computation of the partial weekly benefit shall be made without regard to any  
benefits received by the claimant under a supplemental benefit plan referred to in G.S.  
96-8(13)(d)."

Sec. 10. G.S. 96-13(a)(3) is amended in the first proviso by inserting after the  
words "Provided that" the phrase:

", unless temporarily excused by Commission regulations,".

Sec. 11. G.S. 96-13 is amended by adding at the end a new subsection to  
read:

"(g)(1) Except as herein provided, no individual shall be eligible for benefits for any  
week during any part of which the Commission finds that work was not available to the

individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work but such acts or omissions need not alone be disqualifying under G.S. 96-14.

- (2) Ineligibility pursuant to the preceding paragraph based on a single disciplinary suspension shall not be imposed for any claims week beginning after the tenth consecutive calendar day of the suspension. If at the time a claim is filed for such a week the individual is still so suspended, the individual shall be deemed to have been discharged from his work because of all the acts or omissions that caused his suspension and the issue of whether that discharge was for disqualifying reasons under G.S. 96-14 shall then be adjudicated pursuant to G.S. 96-15.
- (3) Any individual who files a claim for benefits for a week with respect to which he is ineligible under this subsection is deemed to be attached to his employer's payroll and any issue concerning separation from work that may be present under G.S. 96-14 shall be held in abeyance until such time as a claim is filed for a week to which this subsection does not apply."

Sec. 12. G.S. 96-14(1) is amended by adding at the end of that subsection three new paragraphs to read:

"Where an individual leaves work due solely to a disability incurred or other health condition, whether or not related to the work, his leaving shall be considered an involuntary leaving for health reasons if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty-five percent (85%) of the individual's regular wage, whichever is greater; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employer notifies an employee that such employee will be separated on some definite future date for lack of available work, the impending separation does not constitute good cause for quitting that employment, provided that if the individual quits because of the impending separation and shows to the satisfaction of the Commission that it was impracticable or unduly burdensome for the individual to work until the announced separation date, the period of disqualification imposed under this subsection (1) shall be reduced to the greater of four weeks or the period running from the beginning of the week during which application for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work."

Sec. 13. G.S. 96-9(c)(2)b is amended in the first paragraph by deleting the phrase "or," that appears immediately after the phrase "G.S. 96-14;" is further amended in clause (iv) by deleting the phrase "60 days" and substituting the phrase "100 days"; and is further amended by inserting after the phrase "such probationary employment" the phrase "; (v) separations made disqualifying under G.S. 96-14(2B) and (6A); or (vi) separation due to involuntary leaving for disability or health condition".

Sec. 14. G.S. 96-14(2A)(2) is amended in the second sentence by deleting the phrase "nonintentional mistakes" and substituting the phrase "inadvertent mistakes".

Sec. 15. G.S. 96-14 is amended by adding after subsection (2A) a new subsection (2B) to read:

"(2B) For the duration of his unemployment 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 the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of his employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to him, or his application therefor has been denied for a cause that was within his power to control, guard against, or prevent."

Sec. 16. G.S. 96-14 is amended by adding a new subsection (6A) to read as follows:

"(6A) For the duration of his unemployment 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 the individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale:

- a The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;
- b The employing entity was a partnership, limited or general, and the individual was a limited or general partner; or
- c The employing entity was a proprietorship, and the individual was a proprietor."

Sec. 17. G.S. 96-14(10) is amended by deleting the phrase "(2), (3) or (4)" and substituting the phrase "(2), (2B), (3), (4), or (6A)"; and by adding immediately before the last paragraph a new paragraph to read:

"Any disqualification imposed by the provisions of subsection (2A) may be removed as provided by this subsection."

Sec. 18. G.S. 96-15(c) is amended by inserting after the first sentence the following:

"The conduct of hearings shall be governed by suitable regulations established by the Commission. Such regulations need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct

of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Commission prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Commission by regulation shall provide."

Sec. 19. G.S. 96-15(f) is amended in the last sentence by inserting immediately after the word "appealed" the following:

"and, one or more of the parties objects, under such regulations as the Commission may prescribe, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any party receiving the transcript shall pay to the Commission such reasonable fee for the transcript as the Commission may by regulation provide. The fee so prescribed by the Commission shall not exceed the lesser of twenty-five cents (25c) per page or thirty-five dollars (\$35.00) per transcript. The Commission may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the Commission shall waive the fee".

Sec. 20. G.S. 96-15(h) and (i) are rewritten to read:

"(h) Judicial Review. Any decision of the Commission, in the absence of Judicial Review as herein provided, shall become final 30 days after the date of notification or mailing thereof, whichever is earlier. Judicial review shall be permitted only after a party claiming to be aggrieved by the decision has exhausted his remedies before the Commission as provided in this Chapter and has filed a petition for review in the superior court of the county in which he resides or has his principal place of business. The petition for review 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 petitioner shall serve copies of the petition by personal service or by certified mail, return receipt requested, upon the Commission and upon all parties of record to the Commission proceedings. Names and addresses of the parties shall be furnished to the petitioner by the Commission upon request. The Commission shall be deemed to be a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. Upon motion of the Commission, the court shall dismiss any review for which the petition is untimely filed, untimely or improperly served, or for which it otherwise fails to comply with the requirements of this subsection. 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 is occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(i) Review Proceedings. If a timely petition for review has been filed and served as provided in G.S. 96-15(h), the court may make party defendant any other party it deems 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 fact by the Commission, if there is evidence to support them and in the absence of fraud, shall be conclusive, and the jurisdiction of the 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 to 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 appeal. Upon the final determination of the case or proceeding, the Commission shall enter an order in accordance with the 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. 21. G.S. 96-17(b1) is rewritten to read:

"(b1) Fees Prohibited. Except as otherwise provided in this Chapter, no individual claiming benefits in any administrative proceeding under this Chapter shall be charged fees of any kind by the Commission or its representative, and in any court proceeding under this Chapter each party shall bear its own costs and legal fees."

Sec. 22. G.S. 96-18(g)(1) is amended by adding after the word "liable" the phrase ", for 10 years after the decision under subsection (e) becomes final,".

Sec. 23. G.S. 96-4(b) is amended by deleting the last sentence and substituting the following:

"Before the adoption, amendment, or repeal of any permanent regulation, the Commission shall publish notice of the public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be published in one or more newspapers of general circulation in this State at least 10 days before the public hearing and at least 20 days prior to the proposed effective date of the proposed permanent regulation. The published notice of public hearing shall include the time and place of the public hearing; a statement of the manner in which data, opinions, and arguments may be submitted to or before the Commission; a statement of the terms or substance of the proposed regulation; and the proposed effective date of the regulation. Any permanent regulation adopted after following the above procedure shall become effective on its effective date and after it is published in the manner provided for in subsection (c) as well as such additional publication as the Commission deems appropriate. Additionally, the Commission shall provide notice of adoption by mail to the last known addresses of all persons who submitted data, opinions, or arguments to the Commission with respect to the regulation. Temporary regulations may be adopted,

amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission but shall remain in force for no longer than 120 days."

Sec. 24. Section 23 of this act shall apply only to regulations adopted on or after January 1, 1986. All Commission regulations in force on December 31, 1985, shall be deemed permanent regulations and nothing in this act shall be construed to render those regulations ineffective or invalid.

Sec. 25. This act shall become effective July 1, 1985.

In the General Assembly read three times and ratified, this the 1st day of July, 1985.