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SENATE BILL DRS35136-LRxf-64F

Short Title: 2021 Unemployment Insurance Reform.

(Public)

Sponsors: Senators Nickel, Lowe, and Woodard (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT REFORMING THE EMPLOYMENT SECURITY LAWS BY INCREASING BENEFIT ELIGIBILITY TO A TWENTY-SIX WEEK PERIOD AND THE MAXIMUM WEEKLY BENEFIT AMOUNT TO THE SUM EQUAL TO FIVE HUNDRED DOLLARS ADJUSTED ANNUALLY FOR INFLATION, BASING THE CALCULATION OF THE BENEFIT AMOUNT ON THE HIGHEST PAID QUARTER, INCREASING BENEFITS ALLOWED FOR PARTIAL UNEMPLOYMENT, PROVIDING BENEFITS IN CASES WHERE AN INDIVIDUAL LEAVES EMPLOYMENT FOR SPOUSAL RELOCATION OR HEALTH REASONS OR DUE TO AN UNDUE HARDSHIP, AUTHORIZING THE FORGIVENESS OF NONFRAUDULENT OVERPAYMENTS CAUSED BY AGENCY ERROR, AND ESTABLISHING A SHORT-TERM COMPENSATION PROGRAM TO BENEFIT EMPLOYERS AND EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1.1.(a) Increase Weekly Benefit Amount. – G.S. 96-14.2(a) reads as rewritten:

"(a) Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally unemployed is an amount equal to the wages paid to the individual in the ~~last two completed quarters~~ highest paid quarter of the individual's base period divided by ~~52~~ 26 and rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits. The weekly benefit amount may not exceed ~~three hundred fifty dollars (\$350.00)~~ five hundred dollars (\$500.00), adjusted annually for increases in the consumer price index. This adjustment shall be made on January 1 of each year and calculated as the percentage of change between the October Consumer Price Index in the calendar year prior and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of one percent (1/10 of 1%), provided that this percentage change is positive. For the purposes of this subsection, the term "consumer price index" means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, not seasonally adjusted, standard reference base, as published by the Bureau of Labor Statistics of the U.S. Department of Labor."

SECTION 1.1.(b) Reform Partial Weekly Benefit. – G.S. 96-14.2(b) reads as rewritten:

"(b) Partial Weekly Benefit Amount. – ~~The weekly benefit amount for an individual who is partially unemployed or part totally employed is the amount the individual would receive under subsection (a) of this section if the individual were totally unemployed, reduced by the amount of any wages the individual receives in the benefit week in excess of twenty percent (20%) of the benefit amount applicable to total unemployment. If the total wages payable to an individual for less than full-time work performed in a week claimed exceed one-half of the~~



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individual's weekly benefit amount, the amount of wages that exceed one-half of the weekly benefit amount shall be deducted from the benefits payable to the claimant. If the amount so calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar. Payments received by an individual under a supplemental benefit plan do not affect the computation of the individual's partial weekly benefit."

SECTION 2.1. Increase Duration of Benefits. – G.S. 96-14.3 reads as rewritten:

"§ 96-14.3. Duration of benefits.

(a) ~~Duration.—The number of weeks an individual is allowed to receive unemployment benefits depends on the seasonal adjusted statewide unemployment rate that applies to the six month base period in which the claim is filed. One six month base period begins on January 1 and one six month base period begins on July 1. For the base period that begins January 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of July, August, and September applies. For the base period that begins July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of January, February, and March applies. The Division must use the most recent seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and not the rate as revised in the annual benchmark.~~

| Seasonal Adjusted Unemployment Rate | Number of Weeks |
|--|----------------------------|
| Less than or equal to 5.5% | 12 |
| Greater than 5.5% up to 6% | 13 |
| Greater than 6% up to 6.5% | 14 |
| Greater than 6.5% up to 7% | 15 |
| Greater than 7% up to 7.5% | 16 |
| Greater than 7.5% up to 8% | 17 |
| Greater than 8% up to 8.5% | 18 |
| Greater than 8.5% up to 9% | 19 |
| Greater than 9% | 20 |

(a1) Maximum Duration. – An eligible individual is entitled to receive unemployment benefits for a maximum period of 26 weeks, unless the benefit period is extended expressly by State or federal law.

(b) ~~Total Benefits.~~ – The total benefits paid to an individual equals the individual's weekly benefit amount allowed under G.S. 96-14.2 multiplied by ~~the number of weeks allowed under subsection (a) of this section.~~26."

SECTION 3.1. Recognize Spousal Relocation and Undue Hardships. – G.S. 96-14.8 reads as rewritten:

"§ 96-14.8. ~~Military spouse relocation~~ Spousal relocation, undue family hardship, health reasons, and domestic violence are good causes for leaving.

An individual is not disqualified for benefits for leaving work for one of the reasons listed in this section. Benefits paid on the basis of this section are not chargeable to the employer's account:

- (1) Military spouse relocation. – Leaving work to accompany the individual's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another.
- (2) Domestic violence. – Leaving work for reasons of domestic violence if the individual reasonably believes that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family. For purposes of this subdivision, an individual is a victim of domestic violence if one or more of the following applies:
 - a. The individual has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes.

- b. There is evidence of domestic violence, sexual offense, or stalking. Evidence of domestic violence, sexual offense, or stalking may include any one or more of the following:
 - 1. Law enforcement, court, or federal agency records or files.
 - 2. Documentation from a domestic violence or sexual assault program if the individual is alleged to be a victim of domestic violence or sexual assault.
 - 3. Documentation from a religious, medical, or other professional from whom the individual has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking.
- c. The individual has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the individual or upon a minor child with or in the custody of the individual by another individual who has or has had a familial relationship with the individual or minor child.

(3) Health reasons. – Where an individual leaves work due solely to a disability incurred or other health condition, whether or not related to the work, and the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, 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.

(4) Undue family hardship. – Arises when an individual is unable to accept a particular shift because the individual is unable to obtain (i) child care during the shift for a minor child under 14 years of age who is in the legally recognized custody of the individual, (ii) elder care during that shift for an aged or disabled parent of the individual, or (iii) care for any disabled member of that individual's immediate family.

(5) Spousal relocation. – Leaving work to accompany the claimant's spouse to a new place of residence where the spouse has secured work in a location that is too far removed for the claimant reasonably to continue to work."

SECTION 4.1.(a) Forgive Overpayment Through Division Error. – G.S. 96-18(g)(2)

reads as rewritten:

"(g) ...

- (2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by ~~him~~the person or by another of a material fact (irrespective of whether ~~such~~the nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which ~~he~~the person was not entitled for any reason (~~including~~except errors on the part of any representative of the Division) shall be liable to repay such sum to the Division as provided in subdivision (3) of this subsection."

SECTION 4.1.(b) Noncharge Overpayment. – G.S. 96-18.1 reads as rewritten:

"§ 96-18.1. Attachment and garnishment of fraudulent ~~overpayment~~overpayment; noncharging and forgiveness of nonfraudulent overpayment.

1 (a) ~~Applicability. – This section applies.~~ Subsections (a) through (d) of this section apply
2 to an individual who has been provided notice of a determination or an appeals decision finding
3 that the individual, or another individual acting in the individual's behalf and with the individual's
4 knowledge, has knowingly done one or more of the following to obtain or increase a benefit or
5 other payment under this Chapter:

6 ...

7 (e) Nonfraudulent Overpayment. – No benefit charges shall be made to the account of
8 any employer where benefits are paid as the result of a decision by the Division if the decision
9 to pay benefits is ultimately reversed; nor shall the benefits paid be deemed to constitute an
10 overpayment under G.S. 96-18(g)(2)."

11 **SECTION 5.1.** Chapter 96 of the General Statutes is amended by adding a new
12 Article to read:

13 "Article 6.

14 "Short-Time Compensation Program.

15 "**§ 96-45. Definitions.**

16 The following definitions apply in this Article:

- 17 (1) Affected unit. – A specific plant, department, shift, or other definable unit of
18 an employing unit that has at least two employees to which an approved
19 short-time compensation plan applies.
- 20 (2) Approved short-time compensation plan. – A plan that is approved by the
21 Division as provided by this Article.
- 22 (3) Health and retirement benefits. – Employer-provided health benefits and
23 retirement benefits under a defined benefit pension plan as defined in section
24 414(j) of the Internal Revenue Code, contributions under a defined
25 contribution plan as defined in section 414(i) of the Internal Revenue Code,
26 or that are incidents of employment in addition to the cash remuneration
27 earned.
- 28 (4) Program. – Short-time compensation program established pursuant to this
29 Article.
- 30 (5) Short-time compensation. – The unemployment benefits payable to
31 employees in an affected unit under an approved short-time compensation
32 plan, as distinguished from the unemployment benefits otherwise payable
33 under the unemployment compensation provisions of State law.
- 34 (6) Short-time compensation plan. – A plan submitted by an employer for
35 approval by an affected unit of the employer to avert layoffs.
- 36 (7) Unemployment compensation. – The unemployment benefits payable under
37 this Article other than short-time compensation and includes any amounts
38 payable pursuant to an agreement under any federal law providing for
39 compensation, assistance, or allowances with respect to unemployment.
- 40 (8) Usual weekly hours of work. – The usual hours of work for full-time or
41 part-time employees in the affected unit when that unit is operating on its
42 regular basis, not to exceed 40 hours and not including hours of overtime
43 work.

44 "**§ 96-46. Application to participate in short-time compensation program.**

45 (a) An employer that wishes to participate in the Program shall submit to the Division a
46 signed, written short-time compensation plan for approval. The Division shall develop an
47 application form to request approval of a plan and an approval process. The application shall
48 include:

- 49 (1) The affected unit or units covered by the plan, including the number of
50 full-time or part-time workers in the unit, identification of each individual
51 employee in the affected unit by name, social security number, and the

- 1 employer's unemployment tax account number, and any other information
2 required by the Division to identify plan participants.
- 3 (2) A description of how workers in the affected unit will be notified of the
4 employer's participation in the plan if the application is approved, including
5 how the employer will notify those workers in a collective bargaining unit, as
6 well as any workers in the affected unit who are not in a collective bargaining
7 unit. If the employer will not provide advance notice to workers in the affected
8 unit, the employer shall explain in a statement in the application why it is not
9 feasible to provide the notice.
- 10 (3) A requirement that the employer identify the usual weekly hours of work for
11 employees in the affected unit and the specific percentage by which their
12 hours will be reduced during all weeks covered by the plan. An application
13 shall specify the overall work reduction for which a short-time compensation
14 application may be approved, which shall be not less than ten percent (10%)
15 and not more than sixty percent (60%) of the usual work hours during that
16 period. If the plan includes any week for which the employer regularly
17 provides no work due to a holiday or other plant closing, then the week shall
18 be identified in the application. Notwithstanding the other provisions of this
19 subdivision, an employer shall be allowed some weeks of complete plant
20 shutdown in appropriate industries or given certain modes of operation.
- 21 (4) Certification by the employer that, if the employer provides health benefits
22 and retirement benefits to any employee whose usual weekly hours of work
23 are reduced under the Program, the benefits will continue to be provided to
24 employees participating in the Program under the same terms and conditions
25 as though the usual weekly hours of the employee had not been reduced or to
26 the same extent as other employees not participating in the Program. For
27 defined benefit retirement plans, the hours that are reduced under the plan
28 shall be credited for purposes of participation, vesting, and accrual of benefits
29 as though the usual weekly hours of work had not been reduced. The dollar
30 amount of employer contributions to a defined contribution plan that are based
31 on a percentage of compensation may be less due to the reduction in the
32 employee's compensation. However, an application may contain the required
33 certification when a reduction in health and retirement benefits scheduled to
34 occur during the duration of the plan will be applicable equally to employees
35 who are not participating in the Program and to those employees who are
36 participating.
- 37 (5) Certification by the employer that the aggregate reduction in work hours is in
38 lieu of layoffs, whether temporary or permanent layoffs or both.
- 39 (6) Agreement by the employer to (i) furnish reports to the Division relating to
40 the proper conduct of the plan, (ii) allow the Division access to all records
41 necessary to approve or disapprove the plan application and, after approval of
42 the plan, monitor and evaluate the plan, and (iii) follow any other directives
43 the Division deems necessary for the agency to implement the plan and that
44 are consistent with the requirements for plan applications.
- 45 (7) Certification by the employer that participation in the plan and its
46 implementation is consistent with the employer's obligations under applicable
47 federal and State laws.
- 48 (8) The effective date and duration of the plan, which shall expire no later than
49 the end of the twelfth full calendar month after the effective date.

1 (9) Any other provision added to the application by the Division that the U.S.
2 Secretary of Labor determines to be appropriate for the purpose of this
3 Program.

4 (b) Regarding employers in appropriate industries or that have certain modes of
5 operation, and only if the employer demonstrates good cause, the Division may allow flexibility
6 in the application process in cases where it is reasonable not to require specific dates and hours
7 in the application, notwithstanding the provisions of subsection (a) of this section.

8 **"§ 96-47. Approval and disapproval of plan.**

9 The Division shall approve or disapprove a short-time compensation plan in writing within
10 30 days of its receipt and promptly communicate the decision to the employer. A decision
11 disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall
12 be final, but the employer shall be allowed to submit another plan for approval not earlier than
13 90 days from the date of the disapproval.

14 **"§ 96-48. Effective date and duration of plan.**

15 A short-time compensation plan shall be effective on the date that is mutually agreed upon
16 by the employer and the Division, which shall be specified in the notice of approval to the
17 employer. The plan shall expire on the date specified in the notice of approval, which shall be
18 either the date at the end of the twelfth full calendar month after its effective date or an earlier
19 date mutually agreed upon by the employer and the Division. However, if a short-time
20 compensation plan is revoked under G.S. 96-44, the plan shall terminate on the date specified in
21 the Division's written order of revocation. An employer may terminate a plan at any time upon
22 written notice to the Division. Upon receipt of notice from the employer, the Division shall
23 promptly notify each member of the affected unit of the termination date. An employer may
24 submit a new application to participate in another plan at any time after the expiration or
25 termination date.

26 **"§ 96-49. Revocation of approval of plan.**

27 (a) The Division may revoke approval of a short-time compensation plan for good cause
28 at any time. The revocation order shall be in writing and shall specify the reasons for the
29 revocation and the date the revocation is effective. The Division shall state clearly the reasons
30 for the revocation.

31 (b) The Division may periodically review the operation of each employer's plan to assure
32 that no good cause exists for revocation of the approval of the plan. Good cause shall include,
33 but not be limited to, failure to comply with the assurances given in the plan, unreasonable
34 revision of productivity standards for the affected unit, conduct or occurrences tending to defeat
35 the intent and effective operation of the plan, and violation of any criteria on which approval of
36 the plan was based.

37 **"§ 96-50. Modification of approved plan.**

38 (a) An employer may request a modification of an approved plan by filing a written
39 request to the Division. The request shall identify the specific provisions proposed to be modified
40 and provide an explanation of why the proposed modification is appropriate for the plan. The
41 Division shall approve or disapprove the proposed modification in writing within 30 days of
42 receipt and promptly communicate the decision to the employer.

43 (b) The Division, in its discretion, may approve a request for modification of the plan
44 based on conditions that have changed since the plan was approved, provided that the
45 modification is consistent with and supports the purposes for which the plan was initially
46 approved. A modification shall not extend the expiration date of the original plan, and the
47 Division shall promptly notify the employer whether the plan modification has been approved
48 and, if approved, the effective date of modification.

49 (c) An employer is not required to request approval of a plan modification if the change
50 is not substantial, but the employer shall report every change to the plan to the Division promptly
51 and in writing. The Division may terminate an employer's plan if the employer fails to meet this

1 reporting requirement. If the Division determines that the reported change is substantial, the
2 Division shall require the employer to request a modification to the plan.

3 (d) The Division shall use its best efforts to provide for timely and flexible modifications.
4 The provisions of this section shall be liberally construed so as to provide the most flexibility for
5 employers and the Division in order to carry out the purposes of this Article.

6 **"§ 96-51. Eligibility for short-time compensation.**

7 An individual is eligible to receive short-time compensation with respect to any week only if
8 the individual is monetarily eligible for unemployment compensation, not otherwise disqualified
9 for unemployment compensation, and:

10 (1) During the week, the individual is employed as a member of an affected unit
11 under an approved short-time compensation plan, which was approved prior
12 to that week, and the plan is in effect with respect to the week for which
13 short-time compensation is claimed;

14 (2) Notwithstanding any other provisions of this Chapter relating to availability
15 for work and actively seeking work, the individual is available for the
16 individual's usual hours of work with the short-time compensation employer,
17 which may include, for purposes of this section, participating in training to
18 enhance job skills that is approved by the Division as employer-sponsored
19 training or training funded under the Workforce Investment Act of 1998; and

20 (3) Notwithstanding any other provision of law, an individual covered by a plan
21 is deemed unemployed in any week during the duration of the plan if the
22 individual's remuneration as an employee in an affected unit is reduced based
23 on a reduction of the individual's usual weekly hours of work under an
24 approved short-time compensation plan.

25 **"§ 96-52. Benefits.**

26 (a) The short-time compensation weekly benefit amount shall be the product of the
27 regular weekly unemployment compensation amount for a week of total unemployment
28 multiplied by the percentage of reduction in the individual's usual weekly hours of work.

29 (b) An individual may be eligible for short-time compensation or unemployment
30 compensation, as appropriate, except that no individual shall be:

31 (1) Eligible for combined benefits in any benefit year in an amount more than the
32 maximum entitlement established for regular unemployment compensation;
33 and

34 (2) Paid short-time compensation benefits for more than 52 weeks under a plan.

35 (c) The short-time compensation paid to an individual shall be deducted from the
36 maximum entitlement amount of regular unemployment compensation established for the
37 individual's benefit year.

38 (d) Provisions applicable to unemployment compensation claimants shall apply to
39 short-time compensation claimants to the extent that they are not inconsistent with the Program's
40 provisions. An individual who files an initial claim for short-time compensation benefits shall
41 receive a monetary determination.

42 (e) The following provisions apply to individuals who work for both a short-time
43 compensation employer and another employer during weeks covered by the approved short-time
44 compensation plan:

45 (1) If combined hours of work in a week for both employers do not result in a
46 reduction of at least ten percent (10%) or, if higher, the minimum percentage
47 of reduction required to be eligible for a short-time compensation benefit as
48 provided in this Article, of the usual weekly hours of work with the short-time
49 employer, the individual shall not be entitled to benefits under these short-time
50 compensation provisions.

1 (2) If the combined hours of work for both employers results in a reduction equal
2 to or greater than ten percent (10%) or, if higher, the minimum percentage
3 reduction required to be eligible for a short-time compensation employer, the
4 short-time compensation benefit amount payable to the individual is reduced
5 for that week and is determined by multiplying the weekly unemployment
6 benefit amount for a week of total unemployment by the percentage by which
7 the combined hours of work have been reduced by ten percent (10%) or, if
8 higher, the minimum percentage reduction required to be eligible for a
9 short-time compensation benefit as provided in this Article, or more of the
10 individual's usual weekly hours of work. A week for which benefits are paid
11 under this subdivision shall be reported as a week of short-time compensation.

12 (3) If an individual worked the reduced percentage of the usual weekly hours of
13 work for the short-time compensation employer and is available for all his or
14 her usual hours of work with the short-time compensation employer, and the
15 individual did not work any hours for the other employer, either because of
16 the lack of work with that employer or because the individual is excused from
17 work with the other employer, the individual shall be eligible for short-time
18 compensation for that week. The benefit amount for the week shall be
19 calculated as provided in subsection (a) of this section.

20 (f) An individual who is not provided any work during a week by the short-time
21 compensation employer, or any other employer, and who is otherwise eligible for unemployment
22 compensation shall be eligible for the amount of regular unemployment compensation to which
23 the individual would otherwise be eligible.

24 (g) An individual who is not provided any work by the short-time compensation
25 employer during a week, but who works for another employer and is otherwise eligible, may be
26 paid unemployment compensation for that week subject to the disqualifying income or other
27 provision applicable to claims for regular compensation.

28 **"§ 96-53. Charging short-time compensation benefits.**

29 Short-time compensation shall be charged to employers' experience rating accounts in the
30 same manner as unemployment compensation is charged under this Chapter. Employers liable
31 for payments in lieu of contributions shall have short-time compensation attributed to service in
32 their employ in the same manner as unemployment compensation is attributed.

33 **"§ 96-54. Extended benefits.**

34 An individual who has received all of the short-time compensation or combined
35 unemployment compensation and short-time compensation available in a benefit year shall be
36 considered an exhaustee for purposes of extended benefits, and if otherwise eligible under those
37 provisions, shall be eligible to receive extended benefits.

38 **"§ 96-55. Severability.**

39 If any provision of this Article is found by the U.S. Department of Labor to be in violation of
40 federal law, the finding shall render the provision of this Article inoperative, but the finding shall
41 not invalidate the remaining provisions of this Article and is confined in its operation to the
42 specific provision found to be in violation of federal law."

43 **SECTION 6.1.** Effective Dates. – Unless otherwise provided, this act is effective
44 when it becomes law, with:

- 45 (1) Sections 1.1, 2.1, and 3.1 applying to claims for unemployment insurance
46 benefits filed on or after that date.
- 47 (2) Section 4.1 applying to nonfraudulent overpayments pending before, or
48 accruing on or after, that date.
- 49 (3) Section 5.1 of this act becoming effective 60 days from the effective date of
50 this act and applying retroactively to claims arising, and to plans submitted,
51 on or after February 15, 2021.