

TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 128

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H128-ABHxfr-27 [v.1]

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Amends Title [NO]
Third Edition

Date _____, 2021

Senator Nickel

1 moves to amend the bill on page 1, lines 3-5, by rewriting the lines to read:
2 "BONUSES FOR ACCEPTING REEMPLOYMENT, INCREASING THE MAXIMUM
3 WEEKLY UNEMPLOYMENT INSURANCE BENEFIT AMOUNT TO FIVE HUNDRED
4 DOLLARS AND THE MAXIMUM BENEFIT DURATION TO 26 WEEKS,
5 IMPLEMENTING THE WORK SHARE PROGRAM, REQUIRING INDIVIDUALS TO
6 RESPOND TO EMPLOYER REQUESTS, AND MAKING ADMINISTRATIVE
7 CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.";

8
9 and further moves to amend the bill on page 1, lines 7-14, by rewriting the lines to read:
10 "SECTION 1.(a) Reemployment Bonus. – There is hereby established a back-to-
11 work bonus program to be administered by the Department of Commerce, Division of
12 Employment Security. The program shall be funded using the State's Unemployment Insurance
13 Fund. The back-to-work bonus amount shall vary and be payable as follows:"

14
15 and further moves to amend the bill on page 5, line 1, by inserting the following immediately
16 before that line:

17 "SECTION 3.(a) Effective after the week of unemployment ending on or before
18 September 6, 2021, or the end of FPUC supplemental benefits, whichever is later, G.S. 96-14.2(a)
19 reads as rewritten:

20 '(a) Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally
21 unemployed is an amount equal to the wages paid to the individual in the last two completed
22 quarters of the individual's base period divided by 52 and rounded to the next lower whole dollar.
23 If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits. The
24 weekly benefit amount may not exceed ~~three hundred fifty dollars (\$350.00).~~ five hundred dollars
25 (\$500.00).'

26 SECTION 3.(b) Effective after the week of unemployment ending on or before
27 September 6, 2021, G.S. 96-14.3 reads as rewritten:

28 '**§ 96-14.3. Duration of benefits.**

29 (a) ~~Duration. – The number of weeks an individual is allowed to receive unemployment~~
30 ~~benefits depends on the seasonal adjusted statewide unemployment rate that applies to the~~
31 ~~six-month base period in which the claim is filed. One six-month base period begins on January~~
32 ~~1 and one six-month base period begins on July 1. For the base period that begins January 1, the~~



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1 average of the seasonal adjusted unemployment rates for the State for the preceding months of
2 July, August, and September applies. For the base period that begins July 1, the average of the
3 seasonal adjusted unemployment rates for the State for the preceding months of January,
4 February, and March applies. The Division must use the most recent seasonal adjusted
5 unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and
6 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

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

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

24 **SECTION 3.(c)** Chapter 96 of the General Statutes is amended by adding a new
25 Article to read:

26 'Article 6.

27 'Short-Time Compensation Program.

28 **'§ 96-45. Definitions.**

29 The following definitions apply in this Article:

- 30 (1) Affected unit. – A specific plant, department, shift, or other definable unit of
31 an employing unit that has at least two employees to which an approved
32 short-time compensation plan applies.
- 33 (2) Approved short-time compensation plan. – A plan that is approved by the
34 Division as provided by this Article.
- 35 (3) Health and retirement benefits. – Employer-provided health benefits and
36 retirement benefits under a defined benefit pension plan as defined in section
37 414(j) of the Internal Revenue Code, contributions under a defined
38 contribution plan as defined in section 414(i) of the Internal Revenue Code,
39 or that are incidents of employment in addition to the cash remuneration
40 earned.
- 41 (4) Program. – Short-time compensation program established pursuant to this
42 Article.

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- 1 (5) Short-time compensation. – The unemployment benefits payable to
2 employees in an affected unit under an approved short-time compensation
3 plan, as distinguished from the unemployment benefits otherwise payable
4 under the unemployment compensation provisions of State law.
5 (6) Short-time compensation plan. – A plan submitted by an employer for
6 approval by an affected unit of the employer to avert layoffs.
7 (7) Unemployment compensation. – The unemployment benefits payable under
8 this Article other than short-time compensation and includes any amounts
9 payable pursuant to an agreement under any federal law providing for
10 compensation, assistance, or allowances with respect to unemployment.
11 (8) Usual weekly hours of work. – The usual hours of work for full-time or
12 part-time employees in the affected unit when that unit is operating on its
13 regular basis, not to exceed 40 hours and not including hours of overtime
14 work.

15 **§ 96-46. Application to participate in short-time compensation program.**

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

- 20 (1) The affected unit or units covered by the plan, including the number of
21 full-time or part-time workers in the unit, identification of each individual
22 employee in the affected unit by name, social security number, and the
23 employer's unemployment tax account number, and any other information
24 required by the Division to identify plan participants.
25 (2) A description of how workers in the affected unit will be notified of the
26 employer's participation in the plan if the application is approved, including
27 how the employer will notify those workers in a collective bargaining unit, as
28 well as any workers in the affected unit who are not in a collective bargaining
29 unit. If the employer will not provide advance notice to workers in the affected
30 unit, the employer shall explain in a statement in the application why it is not
31 feasible to provide the notice.
32 (3) A requirement that the employer identify the usual weekly hours of work for
33 employees in the affected unit and the specific percentage by which their
34 hours will be reduced during all weeks covered by the plan. An application
35 shall specify the overall work reduction for which a short-time compensation
36 application may be approved, which shall be not less than ten percent (10%)
37 and not more than sixty percent (60%) of the usual work hours during that
38 period. If the plan includes any week for which the employer regularly
39 provides no work due to a holiday or other plant closing, then the week shall
40 be identified in the application. Notwithstanding the other provisions of this
41 subdivision, an employer shall be allowed some weeks of complete plant
42 shutdown in appropriate industries or given certain modes of operation.

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- 1 (4) Certification by the employer that, if the employer provides health benefits
2 and retirement benefits to any employee whose usual weekly hours of work
3 are reduced under the Program, the benefits will continue to be provided to
4 employees participating in the Program under the same terms and conditions
5 as though the usual weekly hours of the employee had not been reduced or to
6 the same extent as other employees not participating in the Program. For
7 defined benefit retirement plans, the hours that are reduced under the plan
8 shall be credited for purposes of participation, vesting, and accrual of benefits
9 as though the usual weekly hours of work had not been reduced. The dollar
10 amount of employer contributions to a defined contribution plan that are based
11 on a percentage of compensation may be less due to the reduction in the
12 employee's compensation. However, an application may contain the required
13 certification when a reduction in health and retirement benefits scheduled to
14 occur during the duration of the plan will be applicable equally to employees
15 who are not participating in the Program and to those employees who are
16 participating.
- 17 (5) Certification by the employer that the aggregate reduction in work hours is in
18 lieu of layoffs, whether temporary or permanent layoffs or both.
- 19 (6) Agreement by the employer to (i) furnish reports to the Division relating to
20 the proper conduct of the plan, (ii) allow the Division access to all records
21 necessary to approve or disapprove the plan application and, after approval of
22 the plan, monitor and evaluate the plan, and (iii) follow any other directives
23 the Division deems necessary for the agency to implement the plan and that
24 are consistent with the requirements for plan applications.
- 25 (7) Certification by the employer that participation in the plan and its
26 implementation is consistent with the employer's obligations under applicable
27 federal and State laws.
- 28 (8) The effective date and duration of the plan, which shall expire no later than
29 the end of the twelfth full calendar month after the effective date.
- 30 (9) Any other provision added to the application by the Division that the U.S.
31 Secretary of Labor determines to be appropriate for the purpose of this
32 Program.

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

37 **§ 96-47. Approval and disapproval of plan.**

38 The Division shall approve or disapprove a short-time compensation plan in writing within
39 30 days of its receipt and promptly communicate the decision to the employer. A decision
40 disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall
41 be final, but the employer shall be allowed to submit another plan for approval not earlier than
42 90 days from the date of the disapproval.

43 **§ 96-48. Effective date and duration of plan.**

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1 A short-time compensation plan shall be effective on the date that is mutually agreed upon
2 by the employer and the Division, which shall be specified in the notice of approval to the
3 employer. The plan shall expire on the date specified in the notice of approval, which shall be
4 either the date at the end of the twelfth full calendar month after its effective date or an earlier
5 date mutually agreed upon by the employer and the Division. However, if a short-time
6 compensation plan is revoked under G.S. 96-44, the plan shall terminate on the date specified in
7 the Division's written order of revocation. An employer may terminate a plan at any time upon
8 written notice to the Division. Upon receipt of notice from the employer, the Division shall
9 promptly notify each member of the affected unit of the termination date. An employer may
10 submit a new application to participate in another plan at any time after the expiration or
11 termination date.

12 **'§ 96-49. Revocation of approval of plan.**

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

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

23 **'§ 96-50. Modification of approved plan.**

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

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

35 (c) An employer is not required to request approval of a plan modification if the change
36 is not substantial, but the employer shall report every change to the plan to the Division promptly
37 and in writing. The Division may terminate an employer's plan if the employer fails to meet this
38 reporting requirement. If the Division determines that the reported change is substantial, the
39 Division shall require the employer to request a modification to the plan.

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

43 **'§ 96-51. Eligibility for short-time compensation.**

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

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

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

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

19 **§ 96-52. Benefits.**

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

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

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

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

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

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

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

39 (1) If combined hours of work in a week for both employers do not result in a
40 reduction of at least ten percent (10%) or, if higher, the minimum percentage
41 of reduction required to be eligible for a short-time compensation benefit as
42 provided in this Article, of the usual weekly hours of work with the short-time

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1 employer, the individual shall not be entitled to benefits under these short-time
2 compensation provisions.

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

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

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

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

30 **'§ 96-53. Charging short-time compensation benefits.**

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

35 **'§ 96-54. Extended benefits.**

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

40 **'§ 96-55. Severability.**

41 If any provision of this Article is found by the U.S. Department of Labor to be in violation of
42 federal law, the finding shall render the provision of this Article inoperative, but the finding shall

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1 not invalidate the remaining provisions of this Article and is confined in its operation to the
2 specific provision found to be in violation of federal law.'

3 **SECTION 3.(d)** Subsections (a) and (b) of this section are effective when this act
4 becomes law, and apply to claims for unemployment insurance benefits filed on or after that date.
5 Subsection (c) of this section becomes effective 60 days from the effective date of this act and
6 applies retroactively to claims arising, and to plans submitted, on or after July 1, 2021.

7 **SECTION 4.** Effective July 1, 2021, notwithstanding any provision of law to the
8 contrary, contributions and payments required from employers under G.S. 96-9.2 are suspended
9 through June 30, 2022.";

10
11 and further moves to amend the bill on page 5, line 1, by deleting "**SECTION 3.**" and substituting
12 "**SECTION 5.**"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____