

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 4\*  
Corrected Copy 1/31/13  
Committee Substitute Favorable 1/31/13

Short Title: UI Fund Solvency & Program Changes.

(Public)

Sponsors:

Referred to:

January 30, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO ADDRESS THE UNEMPLOYMENT INSURANCE DEBT AND TO FOCUS  
3 NORTH CAROLINA'S UNEMPLOYMENT INSURANCE PROGRAM ON PUTTING  
4 CLAIMANTS BACK TO WORK.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** G.S. 96-5(c), (d), (e), (f), and (g) are repealed.

7 **SECTION 1.(b)** Article 1 of Chapter 96 of the General Statutes, as amended by  
8 subsection (a) of this section, reads as rewritten:

9 "Article 1.

10 "~~Division of Employment Security-Definitions and Funds.~~

11 "**§ 96-1. Title. Title and definitions.**

12 (a) Title. – This Chapter shall be known and may be cited as the "Employment Security  
13 Law." ~~Any reference to the Unemployment Compensation Commission shall be deemed a~~  
14 ~~reference to the Department of Commerce, Division of Employment Security (DES), and all~~  
15 ~~powers, duties, funds, records, etc., of the Unemployment Compensation Commission and the~~  
16 ~~Employment Security Commission are transferred to the DES.~~

17 (b) Definitions. – The following definitions apply in this Chapter:

18 (1) Agricultural labor. – Defined in section 3306 of the Code.

19 (2) Average weekly insured wage. – The weekly rate obtained by dividing the  
20 total wages reported by all insured employers for a calendar year by the  
21 average monthly number of individuals in insured employment during that  
22 year and then dividing that quotient by 52.

23 (3) Base period. – The first four of the last five completed calendar quarters  
24 immediately preceding the first day of an individual's benefit year.

25 (4) Benefit. – Compensation payable to an individual with respect to the  
26 individual's unemployment.

27 (5) Benefit year. – The fifty-two-week period beginning with the first day of a  
28 week with respect to which an individual first files a valid claim for benefits  
29 and registers for work. If the individual is payroll attached, the benefit year  
30 begins on the Sunday preceding the payroll week ending date. If the  
31 individual is not payroll attached, the benefit year begins on the Sunday of  
32 the calendar week with respect to which the individual filed a valid claim for  
33 benefits and registered for work.

34 (6) Code. – Defined in G.S. 105-228.90.



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- 1           (7)    Computation date. – August 1 of each year.
- 2           (8)    Department. – The North Carolina Department of Commerce.
- 3           (9)    Division. – The Department's Division of Employment Security.
- 4           (10)   Employee. – Defined in section 3306 of the Code.
- 5           (11)   Employer or employing unit. – Any of the following:
- 6           a.    An employer as defined in section 3306 of the Code.
- 7           b.    A State or local governmental unit required to provide  
8           unemployment compensation coverage to its employees under  
9           section 3309 of the Code.
- 10          c.    A nonprofit organization required to provide unemployment  
11          compensation coverage to its employees under section 3309 of the  
12          Code.
- 13          d.    An Indian tribe required to provide unemployment compensation  
14          coverage to its employees under section 3309 of the Code.
- 15          (12)   Employment. – Defined in section 3306 of the Code, with the following  
16          additions and exclusions:
- 17          a.    Additions. – The term includes service to a governmental unit, a  
18          nonprofit organization, or an Indian tribe as described in 3306(c)(7)  
19          and 3306(c)(8) of the Code.
- 20          b.    Exclusions. – The term excludes all of the following:
- 21                  1.    Service performed by an independent contractor.
- 22                  2.    Service performed for a governmental entity or nonprofit  
23                  organization under 3309(b) and 3309(c) of the Code.
- 24                  3.    Service by one or more of the following individuals if the  
25                  individual is authorized to exercise independent judgment and  
26                  control over the performance of the work and is compensated  
27                  solely by way of commission:
- 28                          A.    A real estate broker, as defined in G.S. 93A-2.
- 29                          B.    A securities salesman, as defined in G.S. 78A-2.
- 30          (13)   Employment security law. – A law enacted by this State or any other state or  
31          territory or by the federal government providing for the payment of  
32          unemployment insurance benefits.
- 33          (14)   Employment service company. – A person that contracts with a client or  
34          customer to supply an individual to perform employment services for the  
35          client or customer and that both under contract and in fact meets all of the  
36          following conditions:
- 37          a.    Negotiates with the client or customer on such matters as time, place,  
38          and type of work, working conditions, quality, and price of the  
39          employment services.
- 40          b.    Determines the assignment of an individual to the client or customer,  
41          even if the individual retains the right to refuse a specific assignment.
- 42          c.    Hires and terminates an individual supplied.
- 43          d.    Sets the rate of pay for the individual supplied.
- 44          e.    Pays the individual supplied.
- 45          (15)   Federal Unemployment Tax Act (FUTA). – Chapter 23 of the Code.
- 46          (16)   Full-time student. – Defined in section 3306 of the Code.
- 47          (17)   Governmental unit. – The term includes all of the following:
- 48          a.    The State, a county, or a municipality, or any department, agency, or  
49          other instrumentality of one of these entities.
- 50          b.    The State Board of Education, the Board of Trustees of The  
51          University of North Carolina, the board of trustees of other

institutions and agencies supported and under the control of the State, a local board of education, or another entity that pays a teacher at a public school or educational institution.

c. A special district, an authority, or another entity exercising governmental authority.

d. An alcoholic beverage control board, an airport authority, a housing authority, a regional authority, or another governmental authority created pursuant to an act of the General Assembly.

(18) Immediate family. – An individual's spouse, child, grandchild, parent, and grandparent, whether the relationship is a biological, step-, half-, or in-law relationship.

(19) Independent contractor. – An individual who contracts to do work for a person and is not subject to that person's control or direction with respect to the manner in which the details of the work are to be performed or what the individual must do as the work progresses.

(20) Indian tribe. – Defined in section 3306 of the Code.

(21) Nonprofit organization. – A religious, charitable, educational, or other organization that is exempt from federal income tax and described in section 501(c)(3) of the Code.

(22) Person. – An individual, a firm, a partnership, an association, a corporation, whether foreign or domestic, a limited liability company, or any other organization or group acting as a unit.

(23) Secretary. – The Secretary of the Department of Commerce or the Secretary's designee.

(24) Taxable wages. – The amount determined under G.S. 96-9.3.

(25) Unemployed. – Defined in G.S. 96-15.01.

(26) Unemployment Trust Fund. – The federal fund established pursuant to section 904 of the Social Security Act, as amended.

(27) United States. – Defined in section 3306 of the Code.

(28) Wages. – Defined in section 3306 of the Code, except that no amount is excluded as provided under subdivision (b)(1) of that section.

...

**§ 96-4.1. Funds used in administering the unemployment compensation laws.**

Four funds are established to administer this Chapter. The State Treasurer is responsible for investing all revenue received by the funds as provided in G.S. 147-69.2 and G.S. 147-69.3. Interest and other investment income earned by a fund accrues to it. Payments from a fund may be made only upon the warrant of the Secretary of Commerce.

The four funds are:

(1) The Employment Security Administration Fund established under G.S. 96-5.

(2) The Supplemental Employment Security Administration Fund established under G.S. 96-5.1.

(3) The Unemployment Insurance Fund established under G.S. 96-6.

(4) The Unemployment Insurance Reserve Fund established under G.S. 96-6.1.

**§ 96-5. Employment Security Administration Fund.**

(a) ~~Special Fund. Fund Established.~~ – There is hereby created in the State treasury a special fund to be known as the ~~The Employment Security Administration Fund~~ is created as a special revenue fund. ~~Fund.~~ All moneys which are deposited or paid into this fund shall be continuously available to the Secretary for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. ~~The Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and~~

1 the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund which are received from the  
2 federal government or any agency thereof or which are appropriated by this State for the  
3 purpose described in G.S. 96-20 shall be expended solely for the purposes and in the amounts  
4 found necessary by the Secretary of Labor for the proper and efficient administration of this  
5 Chapter. The fund shall consistconsists of the following:

- 6 (1) ~~all moneys~~Moneys appropriated by this State, ~~all moneys~~State.
- 7 (2) Moneys received from the United States of America, or any agency thereof,  
8 including the Secretary of Labor, and all moneys received from any other or  
9 another source for such purpose, the administration of this Chapter.
- 10 (3) ~~and shall also include any moneys~~ Moneys received from any agency of the  
11 United States or any other state as compensation for services or facilities  
12 supplied to such agency, ~~any amounts~~ the agency or state.
- 13 (4) Moneys received pursuant to any surety bond or insurance policy or from  
14 other sources for losses sustained by the Employment Security  
15 Administration Fund or by reason of damage to equipment or supplies  
16 purchased from moneys in ~~such fund~~, and the fund.
- 17 (5) ~~proceeds~~ Proceeds realized from the sale or disposition of ~~any such~~  
18 equipment or supplies purchased from moneys in the fund, which may no  
19 longer be necessary for the proper administration of this Chapter: Provided,  
20 any interest collected on contributions and/or penalties collected pursuant to  
21 this Chapter shall be paid into the Special Employment Security  
22 Administration Fund created by subsection (c) of this section. All moneys in  
23 this fund shall be deposited, administered, and disbursed in the same manner  
24 and under the same conditions and requirements as is provided by law for  
25 other special funds in the State treasury, and shall be maintained in a  
26 separate account on the books of the State treasury. The State Treasurer shall  
27 be liable on his official bond for the faithful performance of his duties in  
28 connection with the Employment Security Administration Fund provided for  
29 under this Chapter. Such liability on the official bond shall be effective  
30 immediately upon the enactment of this provision, and such liability shall  
31 exist in addition to any liability upon any separate bond existent on the  
32 effective date of this provision, or which may be given in the future. All  
33 sums recovered on any surety bond for losses sustained by the Employment  
34 Security Administration Fund shall be deposited in said fund.

35 (b) Use of Fund. – Moneys in the Employment Security Administration Fund may be  
36 used by the Division only to administer this Chapter. Moneys received in the fund from a  
37 source other than an appropriation by the General Assembly are appropriated for the purpose of  
38 administering this Chapter. The Secretary is authorized to requisition and receive from the  
39 State's account in the Unemployment Trust Fund any moneys standing to the State's credit that  
40 are permitted by federal law to be used for administering this Chapter and to expend the  
41 moneys for this purpose, without regard to a determination of necessity by a federal agency.

42 Replacement of Funds Lost or Improperly Expended. – If any moneys received from the  
43 Secretary of Labor under Title III of the Social Security Act, or any unencumbered balances in  
44 the Employment Security Administration Fund or any moneys granted to this State pursuant to  
45 the provisions of the Wagner Peyser Act, or any moneys made available by this State or its  
46 political subdivisions and matched by such moneys granted to this State pursuant to the  
47 provisions of the Wagner Peyser Act, are found by the Secretary of Labor, because of any  
48 action or contingency, to have been lost or expended for purposes other than, or in amounts in  
49 excess of those found necessary by the Secretary of Labor for the proper administration of this  
50 Chapter, it is the policy of this State that such moneys, not available from the Special  
51 Employment Security Administration Fund established by subsection (c) of this section, shall

1 be replaced by moneys appropriated for such purpose from the general funds of this State to the  
2 Employment Security Administration Fund for expenditure as provided in subsection (a) of this  
3 section. Upon receipt of notice of such a finding by the Secretary of Labor, the Division shall  
4 promptly pay from the Special Employment Security Administration Fund such sum if  
5 available in such fund; if not available, it shall promptly report the amount required for such  
6 replacement to the Governor and the Governor shall, at the earliest opportunity, submit to the  
7 legislature a request for the appropriation of such amount.

8 **"§ 96-5.1. Supplemental Employment Security Administration Fund.**

9 (a) Fund Established. – The Supplemental Employment Security Administration Fund  
10 is created as a special revenue fund. The fund consists of all interest paid under this Chapter by  
11 employers on overdue contributions and any appropriations made to the fund by the General  
12 Assembly.

13 (b) Use of Funds. – Moneys in the Supplemental Employment Security Administration  
14 Fund may be used by the Division only for one or more of the purposes listed below and may  
15 not be used in lieu of federal funds made available to the Division for the administration of this  
16 Chapter:

- 17 (1) The payment of costs and charges of administration that the Secretary of  
18 Labor determines are not eligible for payment from or were improperly paid  
19 from the Employment Security Administration Fund. The Supplemental  
20 Employment Security Administration Fund must reimburse the Employment  
21 Security Administration Fund for the amount of any improper payment. If  
22 the balance in the Supplemental Fund is insufficient, the Secretary must  
23 notify the Governor, who must request an appropriation for that purpose.
- 24 (2) The temporary stabilization of federal funds cash flow.
- 25 (3) Security for loans from the Unemployment Trust Fund.
- 26 (4) The refund of an overpayment of interest previously credited to the fund. If  
27 an employer takes credit for a previous overpayment of interest when  
28 remitting contributions, the amount of credit taken for the overpayment of  
29 interest must be reimbursed to the Unemployment Insurance Fund.

30 **"§ 96-6. Unemployment Insurance Fund.**

31 (a) Establishment and Control.—Use. – The Unemployment Insurance Fund is  
32 established as an enterprise fund. ~~There is hereby established as a special fund, separate and~~  
33 ~~apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which~~  
34 ~~shall be administered by the Division's Employment Insurance Section~~ The Division must  
35 administer the fund exclusively for the purposes of this Chapter. No money in the fund may be  
36 used, directly or indirectly, to pay interest on an advance received from the Unemployment  
37 Trust Fund.

38 This fund ~~shall consist of:~~ consists of the following sources of revenue:

- 39 (1) ~~All contributions~~ Contributions collected under this Chapter, ~~together with~~  
40 ~~any interest earned upon any moneys in the fund;~~ Chapter.
- 41 (2) ~~Any property~~ Property or securities acquired through the use of moneys  
42 belonging to the ~~fund;~~ fund.
- 43 (3) ~~All Interest and investment earnings of such property or securities;~~ of the  
44 fund.
- 45 (4) ~~Any moneys~~ Moneys received from the federal unemployment ~~this State's~~  
46 account in the ~~unemployment trust fund~~ Unemployment Trust Fund in  
47 accordance with Title XII of the Social Security Act ~~—Act, as~~  
48 ~~amended;~~ amended.
- 49 (5) ~~All moneys~~ Moneys credited to this State's account in the Unemployment  
50 Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as  
51 ~~amended, (U.S.C.A. Title 42, sec. 1103 (a));~~ amended.

- 1           (6) ~~All moneys~~ Moneys paid to this State pursuant to section 204 of the  
2           Federal-State Extended Unemployment Compensation Act of ~~1970~~; 1970.
- 3           (7) Reimbursement payments in lieu of contributions.
- 4           (8) Amounts transferred from the Unemployment Insurance Reserve Fund.

5           ~~All moneys in the fund shall be commingled and undivided.~~

6           (b) ~~Accounts and Deposit.~~ Accounts. ~~— The State Treasurer shall be ex officio the~~  
7 ~~treasurer and custodian of the fund who shall disburse such fund in accordance with the~~  
8 ~~directions of the Secretary and in accordance with such regulations as the Division shall~~  
9 ~~prescribe. The State Treasurer shall must maintain within the fund three separate accounts:~~

- 10           (1) A clearing ~~account,~~ account.
- 11           (2) An unemployment trust fund ~~account,~~ and account.
- 12           (3) A benefit account.

13           (b1) Clearing Account. ~~— All~~ The Division must credit moneys payable to the  
14 Unemployment Insurance Fund fund, upon receipt thereof by the Division, shall be forwarded  
15 immediately to the treasurer who shall immediately deposit them in to the clearing account.  
16 Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon warrants  
17 issued upon the treasurer as provided in G.S. 143B-426.40G under the requisition of the  
18 Division. After clearance thereof, all other The Controller must moneys in the clearing account  
19 shall be immediately deposited—deposit amounts in the clearing account with the secretary of  
20 the treasury of the United States of America—to the credit of the account of this State in the  
21 unemployment trust fund, established and maintained pursuant to section 904 of the Social  
22 Security Act, as amended, any provision of law in this State relating to the deposit,  
23 administration, release, or disbursement of moneys in the possession or custody of this State to  
24 the contrary notwithstanding. Unemployment Trust Fund. The benefit account shall consist of  
25 all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in  
26 the clearing and benefit accounts may be deposited by the treasurer, under the direction of the  
27 Secretary, in any bank or public depository in which general funds of the State may be  
28 deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The  
29 State Treasurer shall be liable on his official bond for the faithful performance of his duties in  
30 connection with the unemployment insurance fund provided for under this Chapter. Such  
31 liability on the official bond shall be effective immediately upon the enactment of this  
32 provision, and such liability shall exist in addition to any liability upon any separate bond  
33 existent on the effective date of this provision, or which may be given in the future. All sums  
34 recovered on any surety bond for losses sustained by the unemployment insurance fund shall be  
35 deposited in said fund.

36           (b2) Unemployment Trust Fund Account. ~~— The unemployment trust fund account~~  
37 consists of moneys requisitioned from the State's account in the Unemployment Trust Fund to  
38 make refunds of overpayments of contributions. To obtain funds needed to make refunds, the  
39 Controller must requisition the amount needed from the Unemployment Trust Fund and credit  
40 the amount received to this account.

41           (c) Benefit Account. ~~— The benefit account consists of moneys requisitioned from the~~  
42 State's account in the Unemployment Trust Fund to pay benefits. To obtain funds to pay  
43 benefits under this Chapter, the Controller must requisition the amount needed from the State's  
44 account in the Unemployment Trust Fund and credit the amount received to this account.  
45 Warrants for the payment of benefits are payable from this account. Amounts in the benefit  
46 account that are not needed to pay the benefits for which they were requisitioned may be  
47 applied to the payment of benefits for succeeding periods or, in the discretion of the Controller,  
48 deposited to the credit of the State's account in the Unemployment Trust Fund. Moneys shall be  
49 requisitioned from this State's account in the unemployment trust fund solely for the payment  
50 of benefits (including extended benefits) and in accordance with regulations prescribed by the  
51 Secretary. The Division shall, from time to time, requisition from the unemployment trust fund

1 such amounts, not exceeding the accounts standing to its account therein, as it deems necessary  
2 for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer  
3 shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon as  
4 provided in G.S. 143B 426.40G and requisitioned by the Division for the payment of benefits  
5 solely from such benefit account. Expenditures of such moneys in the benefit account and  
6 refunds from the clearing account shall not be subject to approval of the Budget Bureau or any  
7 provisions of law requiring specific appropriations or other formal release by State officers of  
8 money in their custody. All warrants issued upon the treasurer for the payment of benefits and  
9 refunds shall be issued as provided in G.S. 143B 426.40G as requisitioned by the Secretary, the  
10 Assistant Secretary, or a duly authorized agent of the Division for that purpose. Any balance of  
11 moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in  
12 the benefit account after the expiration of the period for which such sums were requisitioned  
13 shall either be deducted from estimates for, and may be utilized for the payment of, benefits  
14 during succeeding periods, or, in the discretion of the Division, shall be redeposited with the  
15 Secretary of the Treasury of the United States of America, to the credit of this State's account in  
16 the unemployment trust fund, as provided in subsection (b) of this section.

17 (d) ~~Management of Funds upon Discontinuance of Unemployment Trust Fund. – The~~  
18 ~~provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment~~  
19 ~~trust fund, shall be operative only so long as such unemployment trust fund continues to exist,~~  
20 ~~and so long as the Secretary of the Treasury of the United States of America continues to~~  
21 ~~maintain for this State a separate book account of all funds deposited therein by this State for~~  
22 ~~benefit purposes, together with this State's proportionate share of the earnings of such~~  
23 ~~unemployment trust fund, from which no other state is permitted to make withdrawals. If and~~  
24 ~~when such unemployment trust fund ceases to exist, or such separate book account is no longer~~  
25 ~~maintained, all moneys, properties, or securities therein belonging to the Unemployment~~  
26 ~~Insurance Fund of this State shall be transferred to the treasurer of the Unemployment~~  
27 ~~Insurance Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys,~~  
28 ~~properties, or securities in a manner approved by the Secretary of the Department of~~  
29 ~~Commerce, in accordance with the provisions of this Chapter: Provided, that such moneys shall~~  
30 ~~be invested in the following readily marketable classes of securities: Bonds or other~~  
31 ~~interest bearing obligations of the United States of America or such investments as are now~~  
32 ~~permitted by law for sinking funds of the State of North Carolina; and provided further, that~~  
33 ~~such investment shall at all times be so made that all the assets of the fund shall always be~~  
34 ~~readily convertible into cash when needed for the payment of benefits. The treasurer shall~~  
35 ~~dispose of securities or other properties belonging to the Unemployment Insurance Fund only~~  
36 ~~under the direction of the Secretary of the Department of Commerce.~~If the Unemployment  
37 Trust Fund or the State's account within the federal Fund ceases to exist, the credit balance of  
38 the State's account in that Fund must be transferred to the Unemployment Insurance Fund and  
39 credited to the benefit account.

40 (e) ~~Benefits shall be deemed to be due and payable under this Chapter only to the extent~~  
41 ~~provided in this Chapter and to the extent that moneys are available therefor to the credit of the~~  
42 ~~Unemployment Insurance Fund, and neither the State nor the Division shall be liable for any~~  
43 ~~amount in excess of such sums.~~

44 (f) ~~Any interest required to be paid on advances under Title XII of the Social Security~~  
45 ~~Act shall be paid in a timely manner and shall not be paid, directly or indirectly, from amounts in~~  
46 ~~the Unemployment Insurance Fund.~~

#### 47 **"§ 96-6.1. Unemployment Insurance Reserve Fund.**

48 (a) Establishment and Use. – The Unemployment Insurance Reserve Fund is  
49 established as a special revenue fund. The Fund consists of the revenues derived from the  
50 surtax imposed under G.S. 96-9.7. Moneys in the Fund may be used only for the following  
51 purposes:

- 1 (1) Interest payments required on advances under Title XII of the Social
- 2 Security Act.
- 3 (2) Principal payments on advances under Title XII of the Social Security Act.
- 4 (3) Transfers to the Unemployment Insurance Fund for payment of benefits.
- 5 (4) Administrative costs for the collection of the surtax.
- 6 (5) Refunds of the surtax.

7 (b) Fund Capped. – The balance in the Unemployment Insurance Reserve Fund on  
8 January 1 of any year may not exceed the greater of fifty million dollars (\$50,000,000) or the  
9 amount of interest paid the previous September on advances under Title XII of the Social  
10 Security Act. Any amount in the fund that exceeds the cap must be transferred to the  
11 Unemployment Insurance Fund.

12 ...."

13 **SECTION 2.(a)** The following statutes are repealed: G.S. 96-8, 96-9, 96-11, 96-12,  
14 96-12.1, 96-13, and 96-14.

15 **SECTION 2.(b)** Article 2 of Chapter 96 of the General Statutes, as amended by  
16 subsection (a) of this section, reads as rewritten:

17 "Article 2.

18 "~~Unemployment Insurance Division~~. Contributions and Payments by Employers.

19 ...

20 "**§ 96-9.1. Purpose.**

21 The purpose of this Article is to provide revenue to finance the unemployment benefits  
22 allowed under this Chapter and to do so in as simple a manner as possible by imposing a State  
23 unemployment tax that is similar to the federal unemployment tax imposed under FUTA. All  
24 employers that are liable for the federal unemployment tax on wages paid for services  
25 performed in this State and all employers that are required by FUTA to be given a state  
26 reimbursement option are liable for a State unemployment tax on wages. Revenue from this  
27 tax, referred to as a contribution, is credited to the Unemployment Insurance Fund established  
28 in G.S. 96-6.

29 "**§ 96-9.2. Required contributions to the Unemployment Insurance Fund.**

30 (a) Required Contribution. – An employer is required to make a contribution in each  
31 calendar year to the Unemployment Insurance Fund in an amount equal to the applicable  
32 percentage of the taxable wages the employer pays its employees during the year for services  
33 performed in this State. An employer may not deduct the contributions due in whole or in part  
34 from the remuneration of the individuals employed.

35 The applicable percentage for an employer is considered the employer's contribution rate  
36 and is determined by the employer's base rate and the balance in the Unemployment Insurance  
37 Fund as of the computation date. Taxable wages are determined in accordance with  
38 G.S. 96-9.3. An employer's base rate is either the standard beginning rate or an experience  
39 rating. An employer's experience rating is computed as a reserve ratio in accordance with  
40 G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio  
41 multiplied by sixty-eight hundredths. A positive ERRP produces a lower contribution rate, and  
42 a negative ERRP produces a higher contribution rate.

43 (b) Standard Beginning Rate. – The standard beginning rate applies to an employer  
44 until the employer's account has been chargeable with benefits for at least 12 calendar months  
45 ending July 31 immediately preceding the computation date. An employer's account has been  
46 chargeable with benefits for at least 12 calendar months if the employer has reported wages  
47 paid in four completed calendar quarters and these quarters are in two consecutive calendar  
48 years.

49 (c) Contribution Rate. – The contribution rate for an employer is determined in  
50 accordance with the table set out below and then rounded to the nearest one-hundredth percent  
51 (0.01%), subject to the minimum and maximum contribution rates. The minimum contribution



rate is six-hundredths of one percent (0.06%). The maximum contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on July 31 preceding the computation date.

<u>Employer's Base Rate</u>	<u>UI Trust Fund Balance as Percentage of Total Insured Wages</u>	<u>Contribution Rate</u>
<u>Standard Beginning Rate</u>	<u>All balances</u>	<u>1%</u>
<u>Experience Rating</u>	<u>Less than or equal to 1%</u>	<u>2.9% minus ERRP</u>
	<u>Greater than 1% but less than or equal to 1.25%</u>	<u>2.4% minus ERRP</u>
	<u>Greater than 1.25%</u>	<u>1.9% minus ERRP</u>

(d) Notification of Contribution Rate. – The Division must notify an employer of the employer's contribution rate for a calendar year by January 1 of that year. The contribution rate becomes final unless the employer files an application for review and redetermination prior to May 1 following the effective date of the contribution rate. The Division may redetermine the contribution rate on its own motion within the same time period.

(e) Voluntary Contribution. – An employer that is subject to this section may make a voluntary contribution to the Unemployment Insurance Fund in addition to its required contribution. A voluntary contribution is credited to the employer's account. A voluntary contribution made by an employer within 30 days after the date on an annual notice of its contribution rate is considered to have been made as of the previous July 31.

**§ 96-9.3. Determination of taxable wages.**

(a) Determination. – The Division must determine the taxable wages for each calendar year. An employer is not liable for contributions on wages paid to an employee in excess of taxable wages. The taxable wages of an employee is an amount equal to the greater of the following:

- (1) The federal taxable wages set in section 3306 of the Code.
- (2) Fifty percent (50%) of the average yearly insured wage, rounded to the nearest multiple of one hundred dollars (\$100.00). The average yearly insured wage is the average weekly wage on the computation date multiplied by 52.

(b) Wages Included. – The following wages are included in determining whether the amount of wages paid to an individual in a single calendar year exceeds taxable wages:

- (1) Wages paid to an individual in this State by an employer that made contributions in another state upon the wages paid to the individual because the work was performed in the other state.
- (2) Wages paid by a successor employer to an individual when all of the following apply:
  - a. The individual was an employee of the predecessor and was taken over as an employee by the successor as a part of the organization acquired.
  - b. The predecessor employer paid contributions on the wages paid to the individual while in the predecessor's employ during the year of acquisition.
  - c. The account of the predecessor is transferred to the successor.

**§ 96-9.4. Determination of employer's reserve ratio.**

(a) Account Balance. – The Division must determine the balance of an employer's account on the computation date by subtracting the total amount of all benefits charged to the employer's account for all past periods from the total of all contributions and other amounts credited to the employer for those periods. If the Division finds that an employer failed to file a

1 report or finds that a report filed by an employer is incorrect or insufficient, the Division must  
2 determine the employer's account balance based upon the best information available to it and  
3 must notify the employer that it will use this balance to determine the employer's reserve ratio  
4 unless the employer provides additional information within 15 days of the date of the notice.

5 (b) Reserve Ratio. – The Division must determine an employer's reserve ratio, which is  
6 used to determine the employer's contribution rate. The employer's reserve ratio is the quotient  
7 obtained by dividing the employer's account balance on the computation date by the total  
8 taxable payroll of the employer for the 36 calendar month period ending June 30 preceding the  
9 computation date, expressed as a percentage.

10 **"§ 96-9.5. Performance of services in this State.**

11 A service is performed in this State if it meets one or more of the following descriptions:

12 (1) The service is localized in this State. Service is localized in this State if it  
13 meets one of the following conditions:

14 a. It is performed entirely within the State.

15 b. It is performed both within and without the State, but the service  
16 performed without the State is incidental to the individual's service  
17 within the State. For example, the individual's service without the  
18 State is temporary or transitory in nature or consists of isolated  
19 transactions.

20 (2) The service is not localized in any state but some of the service is performed  
21 in this State, and one or more of the following applies:

22 a. The base of operations is in this State.

23 b. There is no base of operations and the place from which the service  
24 is directed or controlled is in this State.

25 c. The service is not performed in any state that has a base of operations  
26 or a place from which the service is directed or controlled and the  
27 individual who performs the service is a resident of this State.

28 (3) The service, wherever performed, is within the United States or Canada and  
29 both of the following apply:

30 a. The service is not covered under the employment security law of any  
31 other state or Canada.

32 b. The place from which the service is directed or controlled is in this  
33 State.

34 (4) The service is performed outside the United States or Canada by a citizen of  
35 the United States in the employ of an American employer and at least one of  
36 the following applies. For purposes of this subdivision, the term "American  
37 employer" has the same meaning as defined in section 3306 of the Code.

38 a. The employer's principal place of business in the United States is  
39 located in this State.

40 b. The employer has no place of business in the United States, but the  
41 employer is one of the following:

42 1. An individual who is a resident of this State.

43 2. A corporation that is organized under the laws of this State.

44 3. A partnership or a trust and more of its partners or trustees are  
45 residents of this State than of any other state.

46 4. A limited liability company and more of its members are  
47 residents of this State than of any other state.

48 c. The employer has elected coverage in this State in accordance with  
49 G.S. 96-9.9.

1                   d.     The employer has not elected coverage in any state and the employee  
2                   has filed a claim for benefits under the law of this State based on the  
3                   service provided to the employer.

4     **"§ 96-9.6. Election to reimburse Unemployment Insurance Fund in lieu of contributions.**

5     (a) Applicability. – This section applies to a governmental entity, a nonprofit  
6     organization, and an Indian tribe that is required by section 3309 of the Code to have a  
7     reimbursement option. Each of these employers must finance benefits under the contributions  
8     method imposed under G.S. 96-9.2 unless the employer elects to finance benefits by making  
9     reimbursable payments to the Division for the Unemployment Insurance Fund.

10    (b) Election. – An employer may make an election under this section by filing a written  
11    notice of its election with the Division at least 30 days before the January 1 effective date of the  
12    election. An Indian tribe may make separate elections for itself and each subdivision,  
13    subsidiary, or business enterprise wholly owned by the tribe. A new employer may make an  
14    election under this section by filing a written notice of its election within 30 days after the  
15    employer receives notification from the Division that it is eligible to make an election under  
16    this section.

17    An election is valid for a minimum of four years and is binding until the employer files a  
18    notice terminating its election. An employer must file a written notice of termination with the  
19    Division at least 30 days before the January 1 effective date of the termination. The Division  
20    must notify an employer of a determination of the effective date of an election the employer  
21    makes and of any termination of the election. These determinations are subject to  
22    reconsideration, appeal, and review. An employer that makes the election allowed by this  
23    section may not deduct any amount due under this section from the remuneration of the  
24    individuals it employs.

25    (c) Reimbursable Amount. – An employer must reimburse the Unemployment  
26    Insurance Fund for the amount of benefits that are paid to an individual for weeks of  
27    unemployment that begin within a benefit year established during the effective period of the  
28    employer's election and are attributable to service that is covered by section 3309 of the Code  
29    and was performed in the employ of the employer. For regular benefits, the reimbursable  
30    amount is the amount of regular benefits paid. For extended benefits, the reimbursable amount  
31    is the amount not reimbursed by the federal government.

32    (d) Account. – The Division must establish a separate account for each reimbursing  
33    employer. The Division must credit payments made by the employer to the account. The  
34    Division must charge to the account benefits that are paid by the Unemployment Insurance  
35    Fund to individuals for weeks of unemployment that begin within a benefit year established  
36    during the effective period of the election and are attributable to service in the employ of the  
37    employer. All benefits paid must be charged to the employer's account except benefits paid  
38    through error.

39    The Division must furnish an employer with a statement of all credits and charges made to  
40    its account as of the computation date prior to January 1 of the succeeding year. The Division  
41    may, in its sole discretion, provide a reimbursing employer with informational bills or lists of  
42    charges on a basis more frequent than yearly if the Division finds it is in the best interest of the  
43    Division and the affected employer to do so.

44    (e) Annual Reconciliation. – A reimbursing employer must maintain an account  
45    balance equal to one percent (1%) of its taxable wages. The Division must determine the  
46    balance of each employer's account on the computation date. If there is a deficit in the account,  
47    the Division must bill the employer for the amount necessary to bring its account to one percent  
48    (1%) of its taxable wages for the preceding calendar year. The Division must send a bill as soon  
49    as practical. Payment is due within 30 days from the date a bill is mailed. Amounts unpaid by  
50    the due date accrue interest and penalties in the same manner as past-due contributions and are  
51    subject to the same collection remedies provided under G.S. 96-10 for past-due contributions.

1       (f)     Quarterly Wage Reports. – A reimbursing employer must submit quarterly wage  
2 reports to the Division on or before the last day of the month following the close of the calendar  
3 quarter in which the wages are paid. During the first four quarters following an election to be a  
4 reimbursing employer, the employer must submit an advance payment with its quarterly report.  
5 The amount of the advance payment is equal to one percent (1%) of the taxable wages reported  
6 on the quarterly wage report. The Division must remit the payments to the Unemployment  
7 Insurance Fund and credit the payments to the employer's account.

8       (g)     Change in Election. – The Division must close the account of an employer that has  
9 been paying contributions under G.S. 96-9.2 and that elects to change to a reimbursement basis  
10 under this section. A closed account may not be used in any future computation of a  
11 contribution rate. The Division must close the account of an employer that terminates its  
12 election to reimburse the Unemployment Insurance Fund in lieu of making contributions. An  
13 employer that terminates its election under this section is subject to the standard beginning rate.

14       (h)     Noncompliance by Indian Tribes. – An Indian tribe that makes an election under  
15 this section and then fails to comply with this section is subject to the following consequences:

16           (1)     An employer that fails to pay an amount due within 90 days after receiving a  
17 bill and has not paid this liability as of the computation date loses the option  
18 to make reimbursable payments in lieu of contributions for the following  
19 calendar year. An employer that loses the option to make reimbursable  
20 payments in lieu of contributions for a calendar year regains that option for  
21 the following calendar year if it pays its outstanding liability and makes all  
22 contributions during the year for which the option was lost.

23           (2)     Services performed for an employer that fails to make payments, including  
24 interest and penalties, required under this section after all collection  
25 activities considered necessary by the Division have been exhausted, are no  
26 longer treated as "employment" for the purpose of coverage under this  
27 Chapter. An employer that has lost coverage regains coverage under this  
28 Chapter for services performed if the Division determines that all  
29 contributions, payments in lieu of contributions, penalties, and interest have  
30 been paid. The Division must notify the Internal Revenue Service and the  
31 United States Department of Labor of any termination or reinstatement of  
32 coverage pursuant to this subsection.

33       (i)     Transition. – This subsection provides a transitional adjustment period for an  
34 employer that elected to be a reimbursing employer prior to January 1, 2013, and was not  
35 required to submit an advance payment with its first four quarterly reports equal to one percent  
36 (1%) of its reported taxable wages. This subsection expires January 1, 2016.

37           (1)     Governmental entities. – An employer that is a State or local governmental  
38 unit must reimburse the Division in the amount required by subsection (c) of  
39 this section for benefits paid on its behalf, as determined on the computation  
40 date in 2013, but it does not have to reconcile its account balance, as  
41 required under subsection (e) of this section, until 2014. If the employer's  
42 account balance on the computation date in 2014 does not equal one percent  
43 (1%) of its taxable wages reported for the 2013 calendar year, the Division  
44 will bill the employer for the deficiency.

45           (2)     Nonprofit organization. – An employer that is a nonprofit organization may  
46 not secure its election to reimburse in lieu of paying contributions by posting  
47 a surety bond or a line of credit after July 1, 2013. An employer whose  
48 election is secured by a surety bond or line of credit is not required to begin  
49 making quarterly advance payments until the quarter following the quarter  
50 that its surety bond or line of credit expires and is not required to meet the

1 annual reconciliation requirement until the employer has made at least four  
2 quarterly payments.

3 **"§ 96-9.7. Surtax for the Unemployment Insurance Reserve Fund.**

4 (a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a  
5 contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the  
6 contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected  
7 and administered in the same manner as contributions. Surtaxes collected under this section  
8 must be credited to the Unemployment Insurance Reserve Fund established under G.S. 96-6.  
9 Interest collected on unpaid surtaxes imposed by this section must be credited to the  
10 Supplemental Employment Security Administration Fund. Penalties collected on unpaid  
11 surtaxes imposed by this section must be credited to the Civil Penalty and Forfeiture Fund  
12 established in G.S. 115C-457.1.

13 (b) Suspension of Tax. – The tax does not apply in a calendar year if, as of the  
14 preceding August 1 computation date, the amount in the State's account in the Unemployment  
15 Trust Fund equals or exceeds one billion dollars (\$1,000,000,000).

16 **"§ 96-9.8. Voluntary election to pay contributions.**

17 (a) When Allowed. – An employer may elect to be subject to the contribution  
18 requirement imposed by G.S. 96-9.2 and thereby provide benefit coverage for its employees as  
19 follows:

20 (1) An employer that is not otherwise liable for contributions under G.S. 96-9.2  
21 may elect to pay contributions to the same extent as an employer that is  
22 liable for those contributions.

23 (2) An employer that pays for services that are not otherwise subject to the  
24 contribution requirement may elect to pay contributions on those services  
25 performed by individuals in its employ in one or more distinct  
26 establishments or places of business.

27 (3) An employer that employs the services of an individual who resides within  
28 this State but performs the services entirely without the State may elect to  
29 have the individual's service constitute employment subject to contributions  
30 if no contributions are required or paid with respect to the services under an  
31 employment security law of any other state or of the federal government.

32 (b) Election. – To make an election under this section, an employer must file an  
33 application with the Division. An election is effective on the date stated by the Division in a  
34 letter approving the election. An election is irrevocable for the two-year period beginning on  
35 the effective date.

36 (c) Termination. – The Division may, on its own motion, terminate coverage of an  
37 employer who has become subject to this Chapter solely by electing coverage under this  
38 section. This termination may occur within the two-year minimum election period. The  
39 Division must give the employer 30 days written notice of a decision to terminate an election.  
40 The notice must be mailed to the employer's last known address. An employer that elects  
41 coverage under this section may, subsequent to the two-year minimum election period,  
42 terminate the election by filing a notice of termination with the Division. The notice must be  
43 given prior to the first day of March following the first day of January of the calendar year for  
44 which the employer wishes to cease coverage under this section."

45 **SECTION 3.(a)** Chapter 96 of the General Statutes is amended by inserting a new  
46 Article 2A immediately before G.S. 96-10 to read:

47 "Article 2A.

48 Administration and Collection of Contributions."

49 **SECTION 3.(b)** Article 2A of Chapter 96 of the General Statutes, as created in  
50 subsection (a) of this section, is amended by adding the following new sections to read:

51 "Article 2A.

"Administration and Collection of Contributions.

**"§ 96-9.15. Report and payment.**

(a) Report and Payment. – Contributions are payable to the Division when a report is due. A report is due on or before the last day of the month following the close of the calendar quarter in which the wages are paid. The Division must remit the contributions to the Unemployment Insurance Fund. If the amount of the contributions shown to be due after all credits is less than five dollars (\$5.00), no payment need be made.

(b) Overpayment. – If an employer remits an amount in excess of the amount of contributions due, including any applicable penalty and interest, the excess amount remitted is considered an overpayment. The Division must refund an overpayment unless the amount of the overpayment is less than five dollars (\$5.00). Overpayments of less than five dollars (\$5.00) may be refunded only upon receipt of a written demand for the refund from the employer within the time allowed under G.S. 96-10(e).

(c) Method of Payment. – An employer may pay contributions by electronic funds transfer. When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Division may assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). The Division may waive this penalty for good cause shown.

The Division may allow an employer to pay contributions by credit card. An employer that pays by credit card must include an amount equal to any fee charged by the Division for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes.

An employer that does not pay by electronic funds transfer or by credit card must pay by check or cash. A check must be drawn on a United States bank and cash must be in currency of the United States.

(d) Form of Report. – An employer must complete the tax form prescribed by the Division. An employer or an agent of an employer that reports wages for at least 25 employees must file the portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each employee in a format prescribed by the Division. For failure of an employer to comply with this subsection, the Division must assess a penalty of twenty-five dollars (\$25.00). For failure of an agent of an employer to comply with this subsection, the Division may deny the agent the right to report wages and file reports for that employer for a period of one year following the calendar quarter in which the agent filed the improper report. The Division may reduce or waive a penalty for good cause shown.

(e) Jeopardy Assessment. – The Secretary may immediately assess and collect a contribution the Secretary finds is due from an employer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment and collection are necessary in order to protect the interest of the State and the Unemployment Insurance Fund.

(f) Domestic Employer Exception. – The Division may authorize an employer of domestic service employees to file an annual report and to file that report by telephone. An annual report allowed under this subsection is due on or before the last day of the month following the close of the calendar year in which the wages are paid. A domestic service employer that files a report by telephone must contact either the tax auditor assigned to the employer's account or the Employment Insurance Section in Raleigh and report the required information to that auditor or to that section by the date the report is due.

...

**"§ 96-10.1. Compromise of liability.**

(a) Authority. – The Secretary may compromise an employer's liability under this Article when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

- 1           (1)    There is a reasonable doubt as to the amount of the liability of the employer  
 2               under the law and the facts.  
 3           (2)    The employer is insolvent and the Secretary probably could not otherwise  
 4               collect an amount equal to, or in excess of, the amount offered in  
 5               compromise. An employer is considered insolvent only in one of the  
 6               following circumstances:  
 7               a.     It is plain and indisputable that the employer is clearly insolvent and  
 8                    will remain so in the reasonable future.  
 9               b.     The employer has been determined to be insolvent in a judicial  
 10                   proceeding.  
 11           (3)    Collection of a greater amount than that offered in compromise is  
 12               improbable, and the funds or a substantial portion of the funds offered in the  
 13               settlement come from sources from which the Secretary could not otherwise  
 14               collect.

15           (b)    Written Statement. – When the Secretary compromises an employer's liability under  
 16               this section and the amount of the liability is at least one thousand dollars (\$1,000), the  
 17               Secretary must make a written statement that sets out the amount of the liability, the amount  
 18               accepted under the compromise, a summary of the facts concerning the liability, and the  
 19               findings on which the compromise is based. The Secretary must sign the statement and keep a  
 20               record of the statement."

21           **SECTION 4.** Chapter 96 of the General Statutes is amended by inserting a new  
 22           Article 2B to read:

23   "Article 2B.

24   "Administration of Employer Accounts.

25           **"§ 96-11.1. Employer accounts.**

26               The Division must maintain a separate account for each employer. The Division must credit  
 27               the employer's account with all contributions paid by the employer or on the employer's behalf  
 28               and must charge the employer's account for benefits as provided in this Chapter. The Division  
 29               must prepare an annual statement of all charges and credits made to the employer's account  
 30               during the 12 months preceding the computation date. The Division must send the statement to  
 31               the employer when the Division notifies the employer of the employer's contribution rate for  
 32               the succeeding calendar year. The Division may provide a statement of charges and credits  
 33               more frequently upon a request by the employer.

34           **"§ 96-11.2. Allocation of charges to base period employers.**

35               Benefits paid to an individual are charged to an employer's account when the individual's  
 36               benefit year has expired. Benefits paid to an individual must be allocated to the account of each  
 37               base period employer in the proportion that the base period wages paid to the individual in a  
 38               calendar quarter by each base period employer bears to the total wages paid to the individual in  
 39               that quarter by all base period employers. The amount allocated to an employer that pays  
 40               contributions is multiplied by one hundred twenty percent (120%) and charged to that  
 41               employer's account. The amount allocated to an employer that elects to reimburse the  
 42               Unemployment Insurance Fund in lieu of paying contributions is the amount of benefits  
 43               charged to that employer's account.

44           **"§ 96-11.3. Noncharging of benefits.**

45               (a)    To Specific Employer. – Benefits paid to an individual under a claim filed for a  
 46               period occurring after the date of the individual's separation from employment may not be  
 47               charged to the account of the employer by whom the individual was employed at the time of  
 48               the separation if the separation is due to one of the reasons listed below and the employer  
 49               promptly notifies the Division, in accordance with rules adopted by the Division, of the reason:

- 50               (1)    The individual left work without good cause attributable to the employer.

1           (2)    The employer discharged the individual for misconduct in connection with  
2           the work.  
3           (3)    The employer discharged the individual solely for a bona fide inability to do  
4           the work for which the individual was hired and the individual's period of  
5           employment was 100 days or less.

6           (4)    The separation is a disqualifying separation under G.S. 96-14.7.  
7       (b)    To Any Base Period Employer. – Benefits paid to an individual may not be charged  
8       to the account of an employer of the individual if the benefits paid meet any of the following  
9       descriptions:

10           (1)    They were paid to an individual who is attending a vocational school or  
11           training program approved by the Division.

12           (2)    They were paid to an individual for unemployment due directly to a major  
13           natural disaster declared by the President pursuant to the Disaster Relief Act  
14           of 1970, and the individual receiving the benefits would have been eligible  
15           for disaster unemployment assistance under this federal act if the individual  
16           had not received benefits under this Chapter.

17           (3)    They were paid to an individual who left work for good cause under  
18           G.S. 96-14.8.

19           (4)    They were paid as a result of a decision by the Division and the decision is  
20           ultimately reversed upon final adjudication.

21       (c)    Current Employer. – At the request of the employer, no benefit charges may be  
22       made to the account of an employer that has furnished work to an individual who, because of  
23       the loss of employment with one or more other employers, is eligible for partial benefits while  
24       still being furnished work by the employer on substantially the same basis and substantially the  
25       same wages as had been made available to the individual during the individual's base period.  
26       This prohibition applies regardless of whether the employments were simultaneous or  
27       successive. A request made under this subsection must be filed in accordance with rules  
28       adopted by the Division.

29       **§ 96-11.4. No relief for errors resulting from noncompliance.**

30       (a)    Charges for Errors. – An employer's account may not be relieved of charges relating  
31       to benefits paid erroneously from the Unemployment Insurance Fund if the Division determines  
32       that both of the following apply:

33           (1)    The erroneous payment was made because the employer, or the agent of the  
34           employer, was at fault for failing to respond timely or adequately to a written  
35           request from the Division for information relating to the claim for  
36           unemployment compensation. An erroneous payment is one that would not  
37           have been made but for the failure of the employer or the employer's agent to  
38           respond to the Division's request for information related to that claim.

39           (2)    The employer or agent has a pattern of failing to respond timely or  
40           adequately to requests from the Division for information relating to claims  
41           for unemployment compensation. In determining whether the employer or  
42           agent has a pattern of failing to respond timely or adequately, the Division  
43           must consider the number of documented instances of that employer's or  
44           agent's failures to respond in relation to the total requests made to that  
45           employer or agent. An employer or agent may not be determined to have a  
46           pattern of failing to respond if the number of failures during the year prior to  
47           the request is less than two percent (2%) of the total requests made to that  
48           employer or agent.

49       (b)    Appeals. – An employer may appeal a determination by the Division prohibiting the  
50       relief of charges under this section in the same manner as other determinations by the Division  
51       with respect to the charging of employer accounts.



1 (c) Applicability. – This section applies to erroneous payments established on or after  
2 October 21, 2013.

3 **"§ 96-11.5. Contributions credited to wrong account.**

4 (a) Refund of Contributions Credited to Wrong Account. – When contributions are  
5 credited to the wrong account, the erroneous credit may be adjusted only by refunding the  
6 employer who made the payment that was credited in error. This applies regardless of whether  
7 the employer to whom the payment was credited in error is a related entity of the employer to  
8 whom the payment should have been credited. An employer whose payment is credited to the  
9 wrong account may request a refund of the amount erroneously credited by filing a request for  
10 refund within five years of the last day of the calendar year in which the erroneous credit  
11 occurred.

12 (b) Effect on Contribution Rate. – Failure of the Division to credit the correct account  
13 for contributions does not affect the contribution rate determined under G.S. 96-9.2 for either  
14 the employer whose account should have been credited for the contributions or the employer  
15 whose account was credited, and it does not affect the liability of an employer for contributions  
16 determined under those rates. No prior contribution rate for either of the employers may be  
17 adjusted even though the contribution rates were based on incorrect amounts in their account.  
18 An employer is liable for contributions determined under those rates for the five calendar years  
19 preceding the year in which the error is determined. This applies regardless of whether the  
20 employer acted in good faith.

21 **"§ 96-11.6. Interest on Unemployment Insurance Fund allocated among employers'**  
22 **accounts.**

23 The Division must determine the ratio of the credit balance in each employer's account to  
24 the total of the credit balances in all employers' accounts as of the computation date. The  
25 Division must allocate an amount equal to the interest credited to this State's account in the  
26 Unemployment Trust Fund for the four completed calendar quarters preceding the computation  
27 date on a pro rata basis to these accounts. The amount must be prorated to an employer's  
28 account in the same ratio that the credit balance in the employer's account bears to the total of  
29 the credit balances in all the accounts. Voluntary contributions made by an employer after July  
30 31 of a year are not considered a part of the employer's account balance used in determining the  
31 allocation under this section until the computation date in the following year.

32 **"§ 96-11.7. Acquisition of employer and transfer of account to another employer.**

33 (a) Mandatory Transfer. – When an employer acquires all of the organization, trade, or  
34 business of another employer, the account of the predecessor must be transferred as of the date  
35 of the acquisition to the successor employer for use in the determination of the successor's  
36 contribution rate. This mandatory transfer does not apply when there is no common ownership  
37 between the predecessor and the successor and the successor acquired the assets of the  
38 predecessor in a sale in bankruptcy. In this circumstance, the successor's contribution rate is  
39 determined without regard to the predecessor's contribution rate.

40 (b) Consent. – When a distinct and severable portion of an employer's organization,  
41 trade, or business is transferred to a successor employer and the successor employer continues  
42 to operate the acquired organization, trade, or business, the portion of the account of the  
43 transferring employer that related to the transferred business may, with the approval of the  
44 Division, be transferred by mutual consent from the transferring employer to the successor  
45 employer. A successor employer that is a related entity of the transferring employer is eligible  
46 for a transfer from the transferring employer's account only to the extent permitted by rules  
47 adopted by the Division. No transfer may be made to the account of an employer that has  
48 ceased to be an employer under G.S. 96-11.9.

49 If a transfer of part or all of an account is allowed but is not mandatory, the successor  
50 employer requesting the transfer may make a request for transfer by filing an application for  
51 transfer with the Division within two years after the date the business was transferred or the

1 date of notification by the Division of the right to request an account transfer, whichever is  
2 later. If the application is approved and the application was filed within 60 days after  
3 notification from the Division of the right to request a transfer, the transfer is effective as of the  
4 date the business was transferred. If the application is approved and the application was filed  
5 later than 60 days after notification from the Division, the effective date of the transfer is the  
6 first day of the calendar quarter in which the application was filed.

7 If the effective date of a transfer of an account under this subsection is after the  
8 computation date in a calendar year, the Division must recalculate the contribution rate for the  
9 transferring employer and the successor employer based on their account balances on the  
10 effective date of the account transfer. The recalculated contribution rate applies for the calendar  
11 year beginning after the computation date.

12 (c) Employer Number. – A new employer shall not be assigned a discrete employer  
13 number when there is an acquisition or change in the form or organization of an existing  
14 business enterprise, or severable portion thereof, and there is a continuity of control of the  
15 business enterprise. That new employer shall continue to be the same employer for the  
16 purposes of this Chapter as before the acquisition or change in form. The following  
17 assumptions apply in this subsection:

18 (1) "Control of the business enterprise" may occur by means of ownership of the  
19 organization conducting the business enterprise, ownership of assets  
20 necessary to conduct the business enterprise, security arrangements or lease  
21 arrangements covering assets necessary to conduct the business enterprise,  
22 or a contract when the ownership, stated arrangements, or contract provide  
23 for or allow direction of the internal affairs or conduct of the business  
24 enterprise.

25 (2) A "continuity of control" will exist if one or more persons, entities, or other  
26 organizations controlling the business enterprise remain in control of the  
27 business enterprise after an acquisition or change in form. Evidence of  
28 continuity of control includes changes of an individual proprietorship to a  
29 corporation, partnership, limited liability company, association, or estate; a  
30 partnership to an individual proprietorship, corporation, limited liability  
31 company, association, estate, or the addition, deletion, or change of partners;  
32 a limited liability company to an individual proprietorship, partnership,  
33 corporation, association, estate, or to another limited liability company; a  
34 corporation to an individual proprietorship partnership, limited liability  
35 company, association, estate, or to another corporation or from any form to  
36 another form.

37 (d) Contribution Rate. – Notwithstanding the other provisions in this section, when an  
38 account is transferred in its entirety to a successor employer, the transferring employer's  
39 contribution rate is the standard beginning rate.

40 Notwithstanding the other provisions in this section, if a successor employer to whom an  
41 account is transferred was an employer as of the date of the business transfer, the account  
42 transfer does not affect the successor employer's contribution rate for the calendar year in  
43 which the business was transferred. If the successor employer was not an employer as of the  
44 date of the business transfer, the successor employer's contribution rate for the year in which  
45 the business transfer occurs is the standard beginning rate unless one of the following applies:

46 (1) The account transfer is a mandatory transfer, in which case the contribution  
47 rate of the successor employer is the contribution rate of the transferring  
48 employer.

49 (2) The account transfer is by consent and the successor employer filed an  
50 application within 60 days of the business transfer, in which case the  
51 contribution rate of the successor employer is the contribution rate of the

1 transferring employer. If the business was transferred from more than one  
2 employer and the transferring employers had different contribution rates, the  
3 contribution rate of the successor employer is the rate calculated as of the  
4 effective date of the account transfers.

5 (e) Liability for Contributions. – An employer that, by operation of law, purchase, or  
6 otherwise is the successor to an employer liable for contributions becomes liable for  
7 contributions on the day of the succession. This provision does not affect the successor's  
8 liability as otherwise prescribed by law for unpaid contributions due from the predecessor.

9 (f) Deceased or Insolvent Employer. – When the organization, trade, or business of a  
10 deceased person or of an insolvent debtor is taken over and operated by an administrator,  
11 executor, receiver, or trustee in bankruptcy, the new employer automatically succeeds to the  
12 account and contribution rate of the deceased person or insolvent debtor without the necessity  
13 of filing an application for the transfer of the account.

14 **"§ 96-11.8. Closure of account.**

15 (a) Account Closed. – When an employer ceases to be an employer under G.S. 96-11.9,  
16 the employer's account must be closed and may not be used in any future computation of the  
17 employer's contribution rate. An employer has no right or claim to any amounts paid by the  
18 employer into the Unemployment Insurance Fund.

19 (b) Exception for Active Duty. – If the Division finds that an employer's business is  
20 closed solely because one or more of its owners, officers, or partners or its majority stockholder  
21 enters into the Armed Forces of the United States, an ally, or the United Nations, the  
22 employer's account may not be terminated. If the business resumes within two years after the  
23 discharge or release of the affected individual from active duty in the Armed Forces of the  
24 United States, the employer's account is considered to have been chargeable with benefits  
25 throughout more than 13 consecutive calendar months ending July 31 immediately preceding  
26 the computation date. This subsection applies only to an employer that makes contributions  
27 under G.S. 96-9.2. This subsection does not apply to an employer that makes payments in lieu  
28 of contributions under G.S. 96-9.6.

29 **"§ 96-11.9. Termination of coverage.**

30 (a) By Law. – An employer that has not paid wages for two consecutive calendar years  
31 ceases to be an employer liable for contributions under this Chapter.

32 (b) By Application. – An employer may file an application with the Division to  
33 terminate coverage. An application for termination must be filed prior to March 1 of the  
34 calendar year for which the employer wishes to cease coverage. The Division may terminate  
35 coverage if it finds that the employer was not liable for contributions during the preceding  
36 calendar year. Termination of coverage under this subsection is effective as of January 1 of the  
37 calendar year in which the application is granted.

38 (c) After Reactivation. – If the Division reactivates the account of an employer that has  
39 been closed, the employer may file an application with the Division to terminate coverage. The  
40 application must be filed within 120 days after the Division notifies the employer of the  
41 reactivation of the employer's account. The Division may terminate coverage if it finds that the  
42 employer was not liable for contributions during the preceding calendar year. Termination of  
43 coverage under this subsection is effective as of January 1 of the calendar year in which the  
44 application is granted. An employer's protest of liability upon reactivation is considered an  
45 application for termination.

46 (d) After Discovery. – When the Division discovers that an employer is liable for  
47 contributions for a period of more than two years, the employer may file an application with the  
48 Division to terminate coverage. The application must be filed within 90 days after the Division  
49 notifies the employer of the discovered liability. The Division may terminate coverage if it  
50 finds that the employer was not liable for contributions during the preceding calendar year. An  
51 employer's protest of liability upon discovery is considered an application for termination. An

1 employer is not eligible for termination of liability under this subsection if the employer  
2 willfully attempted to defeat or evade the payment of contributions."

3 **SECTION 5.** Article 9 of Chapter 96 of the General Statutes is amended by adding  
4 a new Article to read:

5 "Article 2C.

6 "Benefits Payable for Unemployment Compensation.

7 "**§ 96-14.1. Unemployment benefits.**

8 (a) Purpose. – The purpose of this Article is to provide temporary unemployment  
9 benefits as required by federal law to an individual who is unemployed through no fault on the  
10 part of the individual and who is able, available, and actively seeking work.

11 (b) Valid Claim. – To obtain benefits, an individual must file a valid claim for  
12 unemployment benefits and register for work. An individual must serve a one-week waiting  
13 period for each claim filed. A valid claim is one that meets the employment and wage standards  
14 in this subsection for the individual's base period. A valid claim for a second benefit year is one  
15 that meets the employment and wage standards in this subsection since the beginning date of  
16 the prior benefit year and before the date the new benefit claim is filed.

17 (1) Employment. – The individual has been paid wages in at least two quarters  
18 of the individual's base period.

19 (2) Wages. – The individual has been paid wages totaling at least six times the  
20 average weekly insured wage during the individual's base period. If an  
21 individual lacks sufficient base period wages, then the wage standard for that  
22 individual is determined using the last four completed calendar quarters  
23 immediately preceding the first day of the individual's benefit year. This  
24 alternative base period may not be used by an individual in making a claim  
25 for benefits in the next benefit year.

26 (c) Qualification Determination. – An individual's qualification for benefits is  
27 determined based on the reason for separation from employment from the individual's bona fide  
28 employer. The individual's bona fide employer is the most recent employer for whom the  
29 individual began employment for an indefinite duration or a duration of more than 30  
30 consecutive calendar days, regardless of whether work was performed on all of those days. An  
31 individual who is disqualified has no right to benefits.

32 (d) Eligibility for Benefits. – The Division must calculate a weekly benefit amount and  
33 determine the duration of benefits for an individual who files a valid claim and qualifies for  
34 benefits. To receive the weekly benefit amount, the Division must find that the individual meets  
35 the work search eligibility requirements for each week of the benefit period. An individual who  
36 fails to meet the work search requirements for a given week is ineligible to receive a benefit  
37 until the condition causing the ineligibility ceases to exist.

38 (c) Federal Restrictions. – Benefits are not payable for services performed by the  
39 following individuals, to the extent prohibited by section 3304 of the Code:

40 (1) Instructional, research, or principal administrative employees of educational  
41 institutions.

42 (2) Professional athletes.

43 (3) Aliens.

44 "**§ 96-14.2. Weekly benefit amount.**

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

50 (b) Partial Weekly Benefit Amount. – The weekly benefit amount for an individual who  
51 is partially unemployed or part-totally employed is the amount the individual would receive

1 under subsection (a) of this section if the individual were totally unemployed, reduced by the  
 2 amount of any wages the individual receives in the benefit week in excess of twenty percent  
 3 (20%) of the benefit amount applicable to total unemployment. If the amount so calculated is  
 4 not a whole dollar, the amount must be rounded to the next lower whole dollar. Payments  
 5 received by an individual under a supplemental benefit plan do not affect the computation of  
 6 the individual's partial weekly benefit.

7 (c) Retirement Reduction. – The amount of benefits payable to an individual must be  
 8 reduced as provided in section 3304(a)(15) of the Code.

9 (d) Income Tax Withholding. – An individual may elect to have federal income tax  
 10 deducted and withheld from the individual's unemployment benefits in the amount specified in  
 11 section 3402 of the Code. An individual may elect to have State income tax deducted and  
 12 withheld from the individual's unemployment benefits in an amount determined by the  
 13 individual. The individual may change a previously elected withholding status. The amounts  
 14 deducted and withheld from unemployment benefits remain in the Unemployment Insurance  
 15 Fund until transferred to the appropriate taxing authority as a payment of income tax. The  
 16 Division must advise an individual in writing at the time the individual files a claim for  
 17 unemployment benefits that the benefits paid are subject to federal and State income tax, that  
 18 requirements exist pertaining to estimated tax payments, and that the individual may elect to  
 19 have the amounts withheld.

20 **"§ 96-14.3. Minimum and maximum duration of benefits.**

21 The minimum and maximum number of weeks an individual is allowed to receive  
 22 unemployment benefits depends on the seasonal adjusted statewide unemployment rate that  
 23 applies to the six-month base period in which the claim is filed. One six-month base period  
 24 begins on January 1 and one six-month base period begins on July 1. For the base period that  
 25 begins January 1, the seasonal adjusted unemployment rate for the State for the preceding  
 26 month of October applies. For the base period that begins July 1, the seasonal adjusted  
 27 unemployment rate for the State for the preceding month of April applies. The Division must  
 28 use the most recent seasonal adjusted unemployment rate determined by the U.S. Department  
 29 of Labor, Bureau of Labor Statistics, and not the rate as revised in the annual benchmark. The  
 30 number of weeks allowed for an individual is determined in accordance with G.S. 96-14.4.

<u>Seasonal Adjusted</u> <u>Unemployment Rate</u>	<u>Minimum Number</u> <u>of Weeks</u>	<u>Maximum Number</u> <u>of Weeks</u>
<u>Less than or equal to 5.5%</u>	<u>5</u>	<u>12</u>
<u>Greater than 5.5% up to 6%</u>	<u>6</u>	<u>13</u>
<u>Greater than 6% up to 6.5%</u>	<u>7</u>	<u>14</u>
<u>Greater than 6.5% up to 7%</u>	<u>8</u>	<u>15</u>
<u>Greater than 7% up to 7.5%</u>	<u>9</u>	<u>16</u>
<u>Greater than 7.5% up to 8%</u>	<u>10</u>	<u>17</u>
<u>Greater than 8% up to 8.5%</u>	<u>11</u>	<u>18</u>
<u>Greater than 8.5% up to 9%</u>	<u>12</u>	<u>19</u>
<u>Greater than 9%</u>	<u>13</u>	<u>20</u>

42 **"§ 96-14.4. Duration of benefits for individual claimant.**

43 (a) Total Benefit Amount. – The total amount of benefits paid to an individual may not  
 44 exceed the individual's total benefit amount. The total benefit amount for an individual is  
 45 determined as follows:

- 46 (1) Divide the individual's base-period wages by the average of the wages paid  
 47 to the individual in the last two completed quarters of the base period.
- 48 (2) Multiply the quotient by eight and two-thirds.
- 49 (3) Round the product to the nearest whole number.
- 50 (4) Multiply the resulting amount by the individual's weekly benefit amount as  
 51 determined under G.S. 96-14.2.

1       **(b) Duration.** – The number of weeks an individual may receive benefits varies  
2 depending on the seasonal adjusted statewide unemployment rate that applies at the time the  
3 regular unemployment claim is filed. The total benefits paid to an individual may not be less  
4 than the individual's average weekly benefit amount multiplied by the minimum number of  
5 weeks allowed in accordance with G.S. 96-14.3. The total benefits paid to an individual may  
6 not exceed the lesser of the following:

7           **(1)** The individual's average weekly benefit amount multiplied by the maximum  
8 number of weeks allowed in accordance with G.S. 96-14.3.

9           **(2)** The individual's total benefit amount, as calculated under subsection (a) of  
10 this section.

11 **"§ 96-14.5. Disqualification for good cause not attributable to the employer.**

12       **(a) Determination.** – The Division must determine the reason for an individual's  
13 separation from work. An individual does not have a right to benefits and is disqualified from  
14 receiving benefits if the Division determines that the individual left work for a reason other  
15 than good cause attributable to the employer. When an individual leaves work, the burden of  
16 showing good cause attributable to the employer rests on the individual and the burden may not  
17 be shifted to the employer.

18       **(b) Reduced Work Hours.** – When an individual leaves work due solely to a unilateral  
19 and permanent reduction in work hours of more than fifty percent (50%) of the customary  
20 scheduled full-time work hours in the establishment, plant, or industry in which the individual  
21 was employed, the leaving is presumed to be good cause attributable to the employer. The  
22 employer may rebut the presumption if the reduction is temporary or was occasioned by  
23 malfeasance, misfeasance, or nonfeasance on the part of the individual.

24       **(c) Reduced Rate of Pay.** – When an individual leaves work due solely to a unilateral  
25 and permanent reduction in the individual's rate of pay of more than fifteen percent (15%), the  
26 leaving is presumed to be good cause attributable to the employer. The employer may rebut the  
27 presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or  
28 nonfeasance on the part of the individual.

29 **"§ 96-14.6. Disqualification for misconduct.**

30       **(a) Disqualification.** – An individual who the Division determines is unemployed for  
31 misconduct connected with the work is disqualified for benefits. The period of disqualification  
32 begins with the first day of the first week the individual files a claim for benefits after the  
33 misconduct occurs.

34       **(b) Misconduct.** – Misconduct connected with the work is either of the following:

35           **(1)** Conduct evincing a willful or wanton disregard of the employer's interest as  
36 is found in deliberate violation or disregard of standards of behavior that the  
37 employer has the right to expect of an employee or has explained orally or in  
38 writing to an employee.

39           **(2)** Conduct evincing carelessness or negligence of such degree or recurrence as  
40 to manifest an intentional and substantial disregard of the employer's  
41 interests or of the employee's duties and obligations to the employer.

42       **(c) Examples.** – The following examples are prima facie evidence of misconduct that  
43 may be rebutted by the individual making a claim for benefits:

44           **(1)** Violation of the employer's written alcohol or illegal drug policy.

45           **(2)** Reporting to work significantly impaired by alcohol or illegal drugs.

46           **(3)** Consumption of alcohol or illegal drugs on the employer's premises.

47           **(4)** Conviction by a court of competent jurisdiction for manufacturing, selling,  
48 or distributing a controlled substance punishable under G.S. 90-95(a)(1) or  
49 G.S. 90-95(a)(2) if the offense is related to or connected with an employee's  
50 work for the employer or is in violation of a reasonable work rule or policy.

- 1           (5)   Termination or suspension from employment after arrest or conviction for an  
2           offense involving violence, sex crimes, or illegal drugs if the offense is  
3           related to or connected with the employee's work for an employer or is in  
4           violation of a reasonable work rule or policy.
- 5           (6)   Any physical violence whatsoever related to the employee's work for an  
6           employer, including physical violence directed at supervisors, subordinates,  
7           coworkers, vendors, customers, or the general public.
- 8           (7)   Inappropriate comments or behavior toward supervisors, subordinates,  
9           coworkers, vendors, customers, or to the general public relating to any  
10           federally protected characteristic that creates a hostile work environment.
- 11           (8)   Theft in connection with the employment.
- 12           (9)   Forging or falsifying any document or data related to employment, including  
13           a previously submitted application for employment.
- 14           (10)   Violation of an employer's written absenteeism policy.
- 15           (11)   Refusal to perform reasonably assigned work tasks or failure to adequately  
16           perform employment duties as evidenced by no fewer than three written  
17           reprimands in the 12 months immediately preceding the employee's  
18           termination.

19   **"§ 96-14.7. Other reasons to be disqualified from receiving benefits.**

20       (a)   Failure to Supply Necessary License. – An individual is disqualified for benefits if  
21       the Division determines that the individual is unemployed for failure to possess a license,  
22       certificate, permit, bond, or surety that is necessary for the performance of the individual's  
23       employment if it was the individual's responsibility to supply the necessary documents and the  
24       individual's inability to do so was within the individual's control. The period of disqualification  
25       begins with the first day of the first week the individual files a claim for benefits after the  
26       individual's failure occurs.

27       (b)   Labor Dispute. – An individual is disqualified for benefits if the Division  
28       determines the individual's total or partial unemployment is caused by a labor dispute in active  
29       progress at the factory, establishment, or other premises at which the individual is or was last  
30       employed or by a labor dispute at another place within this State that is owned or operated by  
31       the employer that owns or operates the factory, establishment, or other premises at which the  
32       individual is or was last employed and that supplies materials or services necessary to the  
33       continued and usual operation of the premises at which the individual is or was last employed.  
34       An individual disqualified under the provisions of this subsection continues to be disqualified  
35       after the labor dispute has ceased to be in active progress for the period of time that is  
36       reasonably necessary and required to physically resume operations in the method of operating  
37       in use at the plant, factory, or establishment.

38   **"§ 96-14.8. Military spouse relocation and domestic violence are good causes for leaving.**

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

- 42           (1)   Military spouse relocation. – Leaving work to accompany the individual's  
43           spouse to a new place of residence because the spouse has been reassigned  
44           from one military assignment to another.
- 45           (2)   Domestic violence. – Leaving work for reasons of domestic violence if the  
46           individual reasonably believes that the individual's continued employment  
47           would jeopardize the safety of the individual or of any member of the  
48           individual's immediate family. For purposes of this subdivision, an  
49           individual is a victim of domestic violence if one or more of the following  
50           applies:

- 1           a.     The individual has been adjudged an aggrieved party as set forth by  
2                     Chapter 50B of the General Statutes.
- 3           b.     There is evidence of domestic violence, sexual offense, or stalking.  
4                     Evidence of domestic violence, sexual offense, or stalking may  
5                     include any one or more of the following:
- 6                     1.     Law enforcement, court, or federal agency records or files.  
7                     2.     Documentation from a domestic violence or sexual assault  
8                     program if the individual is alleged to be a victim of domestic  
9                     violence or sexual assault.
- 10                    3.     Documentation from a religious, medical, or other  
11                    professional from whom the individual has sought assistance  
12                    in dealing with the alleged domestic violence, sexual abuse,  
13                    or stalking.
- 14           c.     The individual has been granted program participant status pursuant  
15                     to G.S. 15C-4 as the result of domestic violence committed upon the  
16                     individual or upon a minor child with or in the custody of the  
17                     individual by another individual who has or has had a familial  
18                     relationship with the individual or minor child.

19     **"§ 96-14.9. Weekly certification.**

20           (a)     Requirements. – An individual's eligibility for a weekly benefit amount is  
21                     determined on a week-to-week basis. An individual must meet all of the requirements of this  
22                     section for each weekly benefit period. An individual who fails to meet one or more of the  
23                     requirements is ineligible to receive benefits until the condition causing the ineligibility ceases  
24                     to exist.

- 25                    (1)     File a claim for benefits.  
26                    (2)     Report at an employment office as requested by the Division.  
27                    (3)     Meet the work search requirements of subsection (b) of this section.

28           (b)     Work Search Requirements. – The Division must find that the individual meets all  
29                     of the following work search requirements:

- 30                    (1)     The individual is able to work.  
31                    (2)     The individual is available to work.  
32                    (3)     The individual is actively seeking work.  
33                    (4)     The individual accepts suitable work when offered.

34           (c)     Able to Work. – An individual is not able to work during any week that the  
35                     individual is receiving or is applying for benefits under any other state or federal law based on  
36                     the individual's temporary total or permanent total disability.

37           (d)     Available to Work. – An individual is not available to work during any week that  
38                     one or more of the following applies:

- 39                    (1)     The individual tests positive for a controlled substance. An individual tests  
40                    positive for a controlled substance if all of the conditions of this subdivision  
41                    apply. An employer must report an individual's positive test for a controlled  
42                    substance to the Division.

- 43                    a.     The test is a controlled substance examination administered under  
44                    Article 20 of Chapter 95 of the General Statutes.  
45                    b.     The test is required as a condition of hire for a job.  
46                    c.     The job would be suitable work for the individual.

- 47                    (2)     The individual is incarcerated or has received notice to report to or is  
48                    otherwise detained in a state or federal jail or penal institution. This  
49                    subdivision does not apply to an individual who is incarcerated solely on a  
50                    weekend in a county jail and who is otherwise available for work.



- 1           (3)    The individual is an alien and is not in satisfactory immigration status under  
2           the laws administered by the United States Department of Justice,  
3           Immigration and Naturalization Service.
- 4           (4)    The individual is on disciplinary suspension for more than 30 days based on  
5           acts or omissions that constitute fault on the part of the employee and are  
6           connected with the work.
- 7       (e)    Actively Seeking Work. – The Division's determination of whether an individual is  
8       actively seeking work is based upon the following:
- 9           (1)    The individual is registered for employment services, as required by the  
10          Division.
- 11          (2)    The individual has engaged in an active search for employment that is  
12          appropriate in light of the employment available in the labor market and the  
13          individual's skills and capabilities.
- 14          (3)    The individual has sought work on at least two different days during the  
15          week and made at least two job contacts with potential employers.
- 16          (4)    The individual has maintained a record of the individual's work search  
17          efforts. The record must include the potential employers contacted, the  
18          method of contact, and the date contacted. The individual must provide the  
19          record to the Division upon request.
- 20       (f)    Suitable Work. – The Division's determination of whether an employment offer is  
21       suitable must vary based upon the individual's length of unemployment as follows:
- 22          (1)    During the first 10 weeks of a benefit period, the Division may consider all  
23          of the following:
- 24           a.    The degree of risk involved to the individual's health, safety, and  
25           morals.
- 26           b.    The individual's physical fitness and prior training and experience.
- 27           c.    The individual's prospects for securing local work in the individual's  
28           customary occupation.
- 29           d.    The distance of the available work from the individual's residence.
- 30           e.    The individual's prior earnings.
- 31          (2)    During the remaining weeks of a benefit period, the Division must consider  
32          any employment offer paying one hundred twenty percent (120%) of the  
33          individual's weekly benefit amount to be suitable work.
- 34       (g)    Job Attachment. – An individual who is partially unemployed and for whom the  
35       employer has filed an attached claim for benefits has satisfied the work search requirements for  
36       any given week in the benefit period associated with the attached claim if the Division  
37       determines the individual is available for work with the employer that filed the attached claim.
- 38       (h)    Job Training. – An individual has satisfied the work search requirements for any  
39       given week if the Division determines for that week that one or more of the following applies:
- 40          (1)    Trade Jobs for Success. – The individual is participating in the Trade Jobs  
41          for Success initiative under G.S. 143B-438.16.
- 42          (2)    Reemployment services. – The individual is participating in the  
43          reemployment services as directed by the Division and is actively seeking  
44          work in a manner consistent with the planned reemployment services. The  
45          Division must refer an individual to reemployment services if the Division  
46          finds that the individual would likely exhaust regular benefits and need  
47          reemployment services to make a successful transition to new employment.
- 48          (3)    Vocational school or training program. – The individual is attending a  
49          vocational school or training program approved by the Division.

1       (i) Federal Labor Standards. – An otherwise eligible individual may not be denied  
2 benefits for a given week if the Division determines the individual refused to accept new work  
3 for one or more of the following reasons:

4           (1) The position offered is vacant due directly to a strike, lockout, or other labor  
5 dispute.

6           (2) The remuneration, hours, or other conditions of the work offered are  
7 substantially less favorable to the individual than those prevailing for similar  
8 work in the locality.

9           (3) The individual would be required to join a company union or to resign from  
10 or refrain from joining any bona fide labor organization as a condition of  
11 employment.

12       (j) Trade Act of 1974. – An otherwise eligible individual may not be denied benefits  
13 for any week because the individual is in training approved under section 236(a)(1) of the  
14 Trade Act of 1974, nor may the individual be denied benefits by reason of leaving work to  
15 enter such training, provided the work left is not suitable employment, or because of the  
16 application to any such week in training of provisions in this law or of any applicable federal  
17 unemployment compensation law, relating to availability for work, active search for work, or  
18 refusal to accept work. For purposes of this subsection, the term "suitable employment" means  
19 with respect to an individual, work of a substantially equal or higher skill level than the  
20 individual's past adversely affected employment, as defined for purposes of the Trade Act of  
21 1974, and wages for such work at not less than eighty percent (80%) of the individual's average  
22 weekly wage as determined for the purposes of the Trade Act of 1974.

23 **"§ 96-14.10. Disciplinary suspension.**

24       The disciplinary suspension of an employee for 30 or fewer consecutive calendar days does  
25 not constitute good cause for leaving work. An individual who is on suspension is not available  
26 for work and is not eligible for benefits for any week during any part of the disciplinary  
27 suspension. If the disciplinary suspension exceeds 30 days, the individual is considered to have  
28 been discharged from work because of the acts or omissions that caused the suspension and the  
29 issue is whether the discharge was for disqualifying reasons. During the period of suspension  
30 up to 30 days, the individual is considered to be attached to the employer's payroll, and the  
31 issue of separation from work is held in abeyance until a claim is filed for a week to which this  
32 section does not apply.

33 **"§ 96-14.11. Disqualification for the remaining weeks of the benefit period.**

34       (a) Duration. – An individual may be disqualified from receiving benefits for the  
35 remaining weeks of the claim's duration if one or more subsections of this section apply. The  
36 period of disqualification under this section begins with the first day of the first week after the  
37 disqualifying act occurs.

38       (b) Suitable Work. – An individual is disqualified for any remaining benefits if the  
39 Division determines that the individual has failed, without good cause, to do one or more of the  
40 following:

41           (1) Apply for available suitable work when so directed by the employment  
42 office of the Division.

43           (2) Accept suitable work when offered.

44           (3) Return to the individual's customary self-employment when so directed by  
45 the Division.

46       (c) Recall After Layoff. – An individual is disqualified for any remaining benefits if it  
47 is determined by the Division that the individual is, at the time a claim is filed, unemployed  
48 because the individual, without good cause attributable to the employer and after receiving  
49 notice from the employer, refused to return to work for an employer under one or more of the  
50 following circumstances:

1           (1)    The individual was recalled within four weeks after a layoff. As used in this  
2           subdivision, the term "layoff" means a temporary separation from work due  
3           to no work available for the individual at the time of separation from work  
4           and the individual is retained on the employer's payroll and is a continuing  
5           employee subject to recall by the employer.

6           (2)    The individual was recalled in a week in which the work search  
7           requirements were satisfied under G.S. 96-14.7(g) due to job attachment.

8    **"§ 96-14.12. Limitations on company officers and spouses.**

9           (a)    Disqualification for Benefits. – An individual is disqualified for benefits if the  
10          Division determines either of the following:

11           (1)    The individual is customarily self-employed and can reasonably return to  
12           self-employment.

13           (2)    The individual or the individual's spouse is unemployed because the  
14           individual's ownership share of the employer was voluntarily sold and, at the  
15           time of the sale, one or more of the following applied:

16           a.     The employer was a corporation and the individual held five percent  
17           (5%) or more of the outstanding shares of the voting stock of the  
18           corporation.

19           b.     The employer was a partnership, limited or general, and the  
20           individual was a limited or general partner.

21           c.     The employer was a limited liability company and the individual was  
22           a member.

23           d.     The employer was a proprietorship, and the individual was the  
24           proprietor.

25           (b)    Duration of Benefits. – This subsection applies to an individual and the spouse of an  
26           individual who is unemployed based on services performed for a corporation in which the  
27           individual held five percent (5%) or more of the outstanding shares of the voting stock of the  
28           corporation. The maximum number of weeks an individual or an individual's spouse may  
29           receive benefits is limited to the lesser of six weeks or the applicable weeks determined under  
30           G.S. 96-14.4.

31    **"§ 96-14.13. Limitation on benefits due to lump sum payments.**

32           An individual is disqualified from receiving benefits for any week for which the individual  
33           receives any sum from the employer pursuant to an order of a court, the National Labor  
34           Relations Board, or another adjudicative agency or by private agreement, consent, or arbitration  
35           for loss of pay by reason of discharge. When the employer pays a lump sum that covers a  
36           period of more than one week, the amount paid is allocated to the weeks in the period on a pro  
37           rata basis as determined by the Division. If the amount prorated to a week would, if it had been  
38           earned by the individual during that week of unemployment, have resulted in a reduced benefit  
39           payment as provided in G.S. 96-14.2, the individual is entitled to receive the reduced payment  
40           if the individual is otherwise eligible for benefits.

41           Benefits paid for weeks of unemployment for which back pay awards or other similar  
42           compensation are made constitutes an overpayment of benefits. The employer must deduct the  
43           overpayment from the award prior to payment to the employee and must send the overpayment  
44           to the Division within five days of the payment for application against the overpayment.  
45           Overpayments not remitted to the Division are subject to the same collection procedures as  
46           contributions. The removal of charges made against the employer's account as a result of the  
47           previously paid benefits applies to the calendar year in which the Division receives the  
48           overpayment."

49           **SECTION 6.** G.S. 96-12.01 is recodified as G.S. 96-14.14 and G.S. 96-14.14(a), as  
50          recodified by this section, reads as rewritten:

1       "(a) Extended benefits payable under sub-subdivision (a1)(4)a. of this section shall be  
2 paid under this Chapter as provided in this section as required under the Federal-State Extended  
3 Unemployment Compensation Act of 1970. Extended benefits payable under sub-subdivision  
4 (a1)(4)a. of this section are not required under federal law and may be paid only if the federal  
5 government funds one hundred percent (100%) of the costs of providing them. Extended  
6 benefits are payable in the manner prescribed by this section."

7       **SECTION 7.(a)** Chapter 96 of the General Statutes is amended by inserting a new  
8 Article 2D immediately before G.S. 96-15:

9                               "Article 2D.

10                              Administration of Benefits."

11       **SECTION 7.(b)** Article 2D of Chapter 96 of the General Statutes, as created in  
12 subsection (a) of this section, reads as rewritten:

13                              "Article 2D.

14                              "Administration of Benefits.

15 **"§ 96-15. Claims for benefits.**

16       (a) Filing Generally. – Claims for benefits shall ~~must~~ be made in accordance with such  
17 ~~regulations as the Division may prescribe.~~ rules adopted by the Division. ~~Employers may file~~  
18 ~~claims for employees through the use of automation in the case of partial unemployment. Each~~  
19 ~~employing unit shall post and maintain in places readily accessible to individuals performing~~  
20 ~~services for it printed statements, concerning benefit rights, claims for benefits, and such other~~  
21 ~~matters relating to the administration of this Chapter as the Division may direct. Each~~  
22 ~~employing unit shall supply to such individuals copies of such printed statements or other~~  
23 ~~materials relating to claims for benefits as the Division may direct. Such~~ An employer must  
24 provide individuals providing services for it access to information concerning the  
25 unemployment compensation program. The Division must supply an employer with any printed  
26 statements and other materials shall be supplied by the Division that the Division requires an  
27 employer to provide to individuals to each employing unit without cost to the employing  
28 unit employer.

29       (a1) Attached Claims. – An employer may file claims for employees through the use of  
30 automation in the case of partial unemployment. An employer may file an attached claim for an  
31 employee only once during a calendar year, and the period of partial unemployment for which  
32 the claim is filed may not exceed six weeks. To file an attached claim, an employer must pay  
33 the Division an amount equal to the full cost of unemployment benefits payable to the  
34 employee under the attached claim at the time the attached claim is filed. The Division must  
35 credit the amounts paid to the Unemployment Insurance Fund.

36       An employer may file an attached claim under this subsection only if the employer has a  
37 positive credit balance in its account as determined under Article 2B of this Chapter. If an  
38 employer does not have a positive credit balance in its account, the employer must remit to the  
39 Division an amount equal to the amount necessary to bring the employer's negative credit  
40 balance to at least zero at the time the employer files the attached claim.

41       (b)     ...

42       (2)     Adjudication. – When a protest is made by the claimant to the initial or  
43 monetary determination, or a question or issue is raised or presented as to the  
44 eligibility of a ~~claimant under G.S. 96-13,~~ claimant, or whether any  
45 disqualification should be ~~imposed under G.S. 96-14,~~ imposed, or benefits  
46 denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an  
47 adjudicator. The adjudicator may consider any matter, document or  
48 statement deemed to be pertinent to the issues, including telephone  
49 conversations, and after such consideration shall render a conclusion as to  
50 the claimant's benefit entitlements. The adjudicator shall notify the claimant  
51 and all other interested parties of the conclusion reached. The conclusion of

1 the adjudicator shall be deemed the final decision of the Division unless  
2 within 30 days after the date of notification or mailing of the conclusion,  
3 whichever is earlier, a written appeal is filed pursuant to rules adopted by the  
4 Division. The Division shall be deemed an interested party for such purposes  
5 and may remove to itself or transfer to an appeals referee the proceedings  
6 involving any claim pending before an adjudicator.

7 Provided, any interested employer shall be allowed 10 days from the  
8 delivery of the notice of the filing of a claim against the employer's account  
9 to protest the claim and have the claim referred to an adjudicator for a  
10 decision on the question or issue raised. A copy of the notice of the filing  
11 shall be sent contemporaneously to the employer by telefacsimile  
12 transmission if a fax number is on file. Provided further, no question or issue  
13 may be raised or presented by the Division as to the eligibility of a ~~claimant~~  
14 ~~under G.S. 96-13, claimant,~~ or whether any disqualification should be  
15 ~~imposed under G.S. 96-14, imposed,~~ after 45 days from the first day of the  
16 first week after the question or issue occurs with respect to which week an  
17 individual filed a claim for benefits. None of the provisions of this  
18 subsection shall have the force and effect nor shall the same be construed or  
19 interested as repealing any other provisions of G.S. 96-18.

20 An employer shall receive written notice of the employer's appeal rights  
21 and any forms that are required to allow the employer to protest the claim.  
22 The forms shall include a section referencing the appropriate rules pertaining  
23 to appeals and the instructions on how to appeal.  
24

25 **"§ 96-15.01. Establishing a benefit year.**

26 (a) Initial Unemployment. – An individual is unemployed for the purpose of  
27 establishing a benefit year if one of the following conditions is met:

28 (1) Payroll attachment. – The individual has payroll attachment but because of  
29 lack of work during the payroll week for which the individual is requesting  
30 the establishment of a benefit year, the individual worked less than the  
31 equivalent of three customary scheduled full-time days in the establishment,  
32 plant, or industry in which the individual has payroll attachment as a regular  
33 employee.

34 (2) No payroll attachment. – The individual has no payroll attachment on the  
35 date the individual files a claim for unemployment benefits.

36 (b) Unemployed. – For benefit weeks within an established benefit year, a claimant is  
37 unemployed as provided in this subsection:

38 (1) Totally unemployed. – The claimant's earnings for the week, including  
39 payments in subsection (c) of this section, would not reduce the claimant's  
40 weekly benefit amount as calculated in G.S. 96-14.2.

41 (2) Partially unemployed. – The claimant is payroll attached and both of the  
42 following apply:

43 a. The claimant worked less than three customary scheduled full-time  
44 days in the establishment, plant, or industry in which the claimant is  
45 employed because of lack of work during the payroll week for which  
46 the claimant is requesting benefits.

47 b. The claimant's earnings for the payroll week for which the claimant  
48 is requesting benefits, including payments in subsection (c) of this  
49 section, would qualify the claimant for a reduced weekly benefit  
50 amount as calculated in G.S. 96-14.2.

1           (3) Part-totally unemployed. – The claimant has no payroll attachment during all  
2           or part of the week, and the claimant's earnings for odd jobs or subsidiary  
3           work would qualify the claimant for a reduced weekly benefit amount as  
4           calculated in G.S. 96-14.2.

5           (c) Separation Payments. – An individual is not unemployed if, with respect to the  
6           entire calendar week, the individual receives or will receive as a result of the individual's  
7           separation from work remuneration in one or more of the forms listed in this subsection. If the  
8           remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it  
9           had been earned by the individual during a week of employment. An individual may be  
10           unemployed, as provided in subsection (b) of this section, if the individual is receiving payment  
11           applicable to less than the entire week.

12           (1) Wages in lieu of notice.

13           (2) Accrued vacation pay.

14           (3) Terminal leave pay.

15           (4) Severance pay.

16           (5) Separation pay.

17           (6) Dismissal payments or wages by whatever name.

18           (d) Substitute School Personnel. – An individual that performs service in a school as a  
19           substitute is not unemployed for days or weeks when the individual is not called to work unless  
20           the individual was employed as a full-time substitute during the period of time for which the  
21           individual is requesting benefits. For purposes of this subsection, a full-time substitute is an  
22           employee that works for more than 30 hours a week for the school on a continual basis for a  
23           period of six months or more.

24           ...

25           **§ 96-18.1. Attachment and garnishment of fraudulent overpayment.**

26           (a) Applicability. – This section applies to an individual who has been provided notice  
27           of a determination or an appeals decision finding that the individual, or another individual  
28           acting in the individual's behalf and with the individual's knowledge, has knowingly done one  
29           or more of the following to obtain or increase a benefit or other payment under this Chapter:

30           (1) Made a false statement or misrepresentation.

31           (2) Failed to disclose a material fact.

32           (b) Attachment and Garnishment. – Intangible property that belongs to an individual, is  
33           owed to an individual, or has been transferred by an individual under circumstances that would  
34           permit it to be levied upon if it were tangible property is subject to attachment and garnishment  
35           in payment of a fraudulent overpayment that is due from the individual and is collectible under  
36           this Article. Intangible personal property includes bank deposits, rent, salaries, wages, property  
37           held in the Escheat Fund, and any other property incapable of manual levy or delivery.

38           A person who is in possession of intangible property that is subject to attachment and  
39           garnishment is the garnishee and is liable for the amount the individual owes. The liability  
40           applies only to the amount of the individual's property in the garnishee's possession, reduced by  
41           any amount the individual owes the garnishee.

42           The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information  
43           that identifies an individual who owes a fraudulent overpayment that is collectible under this  
44           section and the amount of the overpayment. The Secretary may submit the information on a  
45           quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A  
46           financial institution that receives the information must determine the amount, if any, of  
47           intangible property it holds that belongs to the individual and must inform the Secretary of its  
48           determination. The Secretary must reimburse a financial institution for its costs in providing the  
49           information, not to exceed the amount payable to the financial institution under G.S. 110-139  
50           for providing information for use in locating a noncustodial parent.

No more than ten percent (10%) of an individual's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment.

(c) Notice. – Before the Secretary attaches and garnishes intangible property in payment of a fraudulent overpayment, the Secretary must send the garnishee a notice of garnishment. The notice must be sent either in person, by certified mail with a return receipt requested, or with the agreement of the garnishee, by electronic means. The notice must contain all of the following information:

(1) The individual's name.

(2) The individual's social security number or federal identification number.

(3) The amount of fraudulent overpaid benefits the individual owes.

(4) An explanation of the liability of a garnishee for fraudulent overpayment of unemployment insurance benefits owed by an overpaid individual.

(5) An explanation of the garnishee's responsibility concerning the notice.

(d) Action. – A garnishee must comply with a notice of garnishment or file a written response to the notice within the time set in this subsection. A garnishee that is a financial institution must comply or file a response within 20 days after receiving a notice of garnishment. All other garnishees must comply or file a response within 30 days after receiving a notice of garnishment. A written response must explain why the garnishee is not subject to garnishment and attachment.

Upon receipt of a written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the fraudulent overpayment of unemployment benefits by civil action."

**SECTION 8.** G.S. 96-24 reads as rewritten:

**"§ 96-24. Local offices; cooperation with United States service; financial aid from United States.**

(a) Agreement. – The ~~Employment Security Section~~ Department of Commerce is authorized to enter into agreement with the governing authorities of any municipality, county, township, or school corporation in the State for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and for the extension of vocational guidance in cooperation with the United States Employment Service, and under and by virtue of any such agreement as aforesaid to pay, from any funds appropriated by the State for the purposes of this Article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of offices and other expenses.

(b) Location. – The Department of Commerce must take into consideration all of the following factors when determining the appropriate number and location of local offices:

(1) Location of the population served.

(2) Staff availability.

(3) Proximity of local offices to each other.

(4) Use of automation products to provide services.

(5) Services and procedural efficiencies.

(6) Any other factors the Division considers necessary in determining the appropriate number and location of local offices."

**SECTION 9.(a)** G.S. 58-89A-120 reads as rewritten:

**"§ 58-89A-120. Unemployment taxes; payroll.**

A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and collection of unemployment insurance contributions or the assignment of discrete employer numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and

1 ~~96-8(6).~~ numbers under the Employment Security Law. The Department of Commerce,  
 2 Division of Employment Security (DES), shall cooperate with the Commissioner in the  
 3 investigation of applicants and licensees and shall provide the Commissioner with access to all  
 4 relevant records and data in the custody of the DES."

5 **SECTION 9.(b)** G.S. 96-4 reads as rewritten:

6 "**§ 96-4. Administration; powers and duties of the Assistant Secretary; Board of Review.**

7 ...  
 8 (b) Board of Review. – The Governor shall appoint a three-person Board of Review to  
 9 determine appeals policies and procedures and to hear appeals arising from the decisions and  
 10 determinations of the ~~Employment Security Section and the Employment Insurance Section~~  
 11 Division. The Board of Review shall be comprised of one member representing employers, one  
 12 member representing employees, and one member representing the general public. Members of  
 13 the Board of Review are subject to confirmation by the General Assembly and shall serve  
 14 four-year terms. The member appointed to represent the general public shall serve as chair of  
 15 the Board of Review and shall be a licensed attorney. The annual salaries of the Board of  
 16 Review shall be set by the General Assembly in the current Operations Appropriations Act.  
 17 The Board of Review shall exercise its decision-making processes independent of the  
 18 Governor, the General Assembly, the Department, and the Division.

19 ...  
 20 (i) Records and Reports. –

21 (1) Each ~~employing unit~~ employer shall keep true and accurate employment  
 22 records, containing such information as the Division may prescribe. The  
 23 records shall be open to inspection and be subject to being copied by the  
 24 Division or its authorized representatives at any reasonable time and as often  
 25 as may be necessary. ~~Any employing unit~~ An employer doing business in  
 26 North Carolina shall make available in this State to the Division, such  
 27 information with respect to ~~persons, firms, or other employing units~~ persons  
 28 performing services for it which the Secretary deems necessary in  
 29 connection with the administration of this Chapter. The Division may  
 30 require from ~~any employing unit~~ an employer any sworn or unsworn reports,  
 31 with respect to persons employed by it, which the Secretary deems necessary  
 32 for the effective administration of this ~~Chapter~~ Chapter, including the  
 33 employer's quarterly tax and wage report containing the name, social  
 34 security number, and gross wages of persons employed during that quarter.

35 (2) If the Division finds that any employer has failed to file any report or return  
 36 required by this Chapter or any regulation made pursuant hereto, or has filed  
 37 a report which the Division finds incorrect or insufficient, the Division may  
 38 make an estimate of the information required from such employer on the  
 39 basis of the best evidence reasonably available to it at the time, and make,  
 40 upon the basis of such estimate, a report or return on behalf of such  
 41 employer, and the report or return so made shall be deemed to be prima facie  
 42 correct, and the Division may make an assessment based upon such report  
 43 and proceed to collect contributions due thereon in the manner as set forth in  
 44 G.S. 96-10(b) of this Chapter: Provided, however, that no such report or  
 45 return shall be made until the employer has first been given at least 10 days'  
 46 notice by registered mail to the last known address of such employer:  
 47 Provided further, that no such report or return shall be used as a basis in  
 48 determining whether ~~such employing unit~~ a person is an employer within the  
 49 meaning of this Chapter.

50 ...  
 51 (p) Reciprocal Arrangements. –



1 (1) The Secretary is hereby authorized to enter into reciprocal arrangements  
2 with appropriate and duly authorized agencies of other states or of the  
3 federal government, or both, whereby:

4 a. Services performed by an individual for ~~a single employing unit an~~  
5 employer for which services are customarily performed in more than  
6 one state shall be deemed to be services performed entirely within  
7 any one of the states

8 1. In which any part of such individual's service is performed or

9 2. In which such individual has his residence or

10 3. In which the ~~employing unit employer~~ maintains a place of  
11 business, provided there is in effect, as to such services, an  
12 election by the ~~employing unit, employer~~, approved by the  
13 agency charged with the administration of such state's  
14 employment security law, pursuant to which the services  
15 performed by such individual for ~~such employing unit the~~  
16 employer are deemed to be performed entirely within such  
17 state.

18 ...

19 (2) Reimbursements paid from the fund pursuant to subparagraphs b and c of  
20 subdivision (1) of this subsection shall be deemed to be ~~benefits for the~~  
21 purpose of G.S. 96-6, 96-9, 96-12 and 96-12.01. benefits. The Division is  
22 authorized to make to other states or federal agencies and to receive from  
23 such other state or federal agencies, reimbursements from or to the fund, in  
24 accordance with arrangements entered into pursuant to subdivision (1) of  
25 this subsection.

26 ...

27 (q) The Division after due notice shall have the right and power to hold and conduct  
28 hearings for the purpose of determining the rights, status and liabilities of ~~any "employing unit"~~  
29 ~~or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and subdivisions~~  
30 thereunder an employer. The ~~Division Board of Review~~ shall have the power and authority to  
31 determine any and all questions and issues of fact or questions of law that may arise under the  
32 Employment Security Law that may affect the rights, liabilities and status of ~~any employing~~  
33 unit or an employer as heretofore defined by the Employment Security Law including the right  
34 to determine the amount of contributions, if any, which may be due the Division by any  
35 employer. Hearings may be before the Board of Review ~~or the Division~~ and shall be held in the  
36 central office of the ~~Division Board of Review~~ or at any other designated place within the State.  
37 They shall be open to the public and shall consist of a review of the evidence taken by a  
38 hearing officer designated by the Board of Review and a determination of the law applicable to  
39 that evidence. The ~~Division Board of Review~~ shall provide for the taking of evidence by a  
40 hearing ~~officer~~ officer employed in the capacity of an attorney by the Department. Such  
41 hearing officer shall have the same power to issue subpoenas, administer oaths, conduct  
42 hearings and take evidence as is possessed by the ~~Division Board of Review~~ and such hearings  
43 shall be recorded, and he shall transmit all testimony and records of such hearings to the Board  
44 ~~of Review or Division~~ for its determination. All such hearings conducted by such hearing  
45 officer shall be scheduled and held in any county in this State in which the ~~employing unit or~~  
46 employer either employer resides, maintains a place of business, or conducts business; however,  
47 the Board of Review ~~or Division~~ may require additional testimony at any hearings held by it at  
48 its office. From all decisions or determinations made by the ~~Assistant Secretary or the Board of~~  
49 Review, any party affected thereby shall be entitled to an appeal to the superior court. Before a  
50 party shall be allowed to appeal, the party shall within 10 days after notice of such decision or  
51 determination, file with the Board of Review exceptions to the decision or the determination,

1 which exceptions will state the grounds of objection to the decision or determination. If any one  
2 of the exceptions shall be overruled then the party may appeal from the order overruling the  
3 exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of  
4 his appeal. When an exception is made to the facts as found by the Board of Review, the appeal  
5 shall be to the superior court in term time but the decision or determination of the ~~Division~~  
6 Board of Review upon such review in the superior court shall be conclusive and binding as to  
7 all questions of fact supported by any competent evidence. When an exception is made to any  
8 rulings of law, as determined by the Board of Review, the appeal shall be to the judge of the  
9 superior court at chambers. The party appealing shall, within 10 days after the notice of appeal  
10 has been served, file with the Board of Review exceptions to the decision or determination  
11 overruling the exception which statement shall assign the errors complained of and the grounds  
12 of the appeal. Upon the filing of such statement the Board of Review shall, within 30 days,  
13 transmit all the papers and evidence considered by it, together with the assignments of errors  
14 filed by the appellant to a judge of the superior court holding court or residing in some district  
15 in which such appellant either resides, maintains a place of business or conducts business, or,  
16 unless the appellant objects after being given reasonable opportunity to object, to a judge of the  
17 Superior Court of Wake County: Provided, however, the 30-day period specified herein may be  
18 extended by agreement of parties.

19 (r) The cause shall be entitled "State of North Carolina on Relationship of the ~~Division~~  
20 ~~of Employment Security, Board of Review, Department of Commerce, of North Carolina~~  
21 against (here insert name of appellant)," and if there are exceptions to any facts found by the  
22 Board of Review, it shall be placed on the civil issue docket of such court and shall have  
23 precedence over other civil actions except those described in G.S. 96-10(b), and such cause  
24 shall be tried under such rules and regulations as are prescribed for the trial of other civil  
25 causes. By consent of all parties the appeal may be held and determined at chambers before any  
26 judge of a district in which the appellant either resides, maintains a place of business or  
27 conducts business, or said appeal may be heard before any judge holding court therein, or in  
28 any district in which the appellant either resides, maintains a place of business or conducts  
29 business. Either party may appeal to the appellate division from the judgment of the superior  
30 court under the same rules and regulations as are prescribed by law for appeals, except that if  
31 an appeal shall be taken on behalf of the Department of Commerce, it shall not be required to  
32 give any undertaking or make any deposit to secure the cost of such appeal and such court may  
33 advance the cause on its docket so as to give the same a speedy hearing.

34 (s) The decision or determination of the ~~Division~~ Board of Review when docketed in  
35 the office of the clerk of the superior court of any county and when properly indexed and  
36 cross-indexed shall have the same force and effect as a judgment rendered by the superior  
37 court, and if it shall be adjudged in the decision or determination of the ~~Division~~ Board of  
38 Review that any employer is indebted to the Division for contributions, penalties and interest or  
39 either of the same, then said judgment shall constitute a lien upon any realty owned by said  
40 employer in the county only from the date of docketing of such decision or determination in the  
41 office of the clerk of the superior court and upon personalty owned by said employer in said  
42 county only from the date of levy on such personalty, and upon the execution thereon no  
43 homestead or personal property exemptions shall be allowed; provided, that nothing herein  
44 shall affect any rights accruing to the Division under G.S. 96-10. The provisions of this section,  
45 however, shall not have the effect of releasing any liens for contributions, penalties or interest,  
46 or either of the same, imposed by other law, nor shall they have the effect of postponing the  
47 payment of said contributions, penalties or interest, or depriving the Division of Employment  
48 Security of any priority in order of payment provided in any other statute under which payment  
49 of the said contributions, penalties and interest or either of the same may be required. The  
50 superior court or any appellate court shall have full power and authority to issue any and all  
51 executions, orders, decrees, or writs that may be necessary to carry out the terms of said

1 decision or determination of the Division or to collect any amount of contribution, penalty or  
2 interest adjudged to be due the Division by said decision or determination. In case of an appeal  
3 from any decision or determination of the Division to the superior court or from any judgment  
4 of the superior court to the appellate division all proceedings to enforce said judgment,  
5 decision, or determination shall be stayed until final determination of such appeal but no  
6 proceedings for the collection of any amount of contribution, penalty or interest due on same  
7 shall be suspended or stayed unless the employer or party adjudged to pay the same shall file  
8 with the clerk of the superior court a bond in such amount not exceeding double the amount of  
9 contribution, penalty, interest or amount due and with such sureties as the clerk of the superior  
10 court deems necessary conditioned upon the payment of the contribution, penalty, interest or  
11 amount due when the appeal shall be finally decided or terminated.

12 ...

13 (u) Notices of hearing shall be issued by the Division or its authorized representative  
14 and sent by registered mail, return receipt requested, to the last known address of ~~any~~  
15 ~~employing unit, employer, employers, persons, or firms involved.~~ The notice shall be sent at  
16 least 15 days prior to the hearing date and shall contain notification of the place, date, hour, and  
17 purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the  
18 Division or its authorized representative and shall order the witness to appear at the time, date  
19 and place shown thereon. Any bond or other undertaking required to be given in order to  
20 suspend or stay any execution shall be given payable to the Department of Commerce. Any  
21 such bond or other undertaking may be forfeited or sued upon as are any other undertakings  
22 payable to the State.

23 ...

24 (x) Confidentiality of Records, Reports, and Information Obtained from Claimants,  
25 Employers, and Units of Government. – Disclosure and redisclosure of confidential  
26 information shall be consistent with 20 C.F.R. Part 603 and any written guidance promulgated  
27 and issued by the U.S. Department of Labor consistent with this regulation and any successor  
28 regulation. To the extent a disclosure or redisclosure of confidential information is permitted or  
29 required by this federal regulation, the Department's authority to disclose or redisclose the  
30 information includes the following:

- 31 (1) Confidentiality of Information Contained in Records and Reports. – (i)  
32 Except as hereinafter otherwise provided, it shall be unlawful for any person  
33 to obtain, disclose, or use, or to authorize or permit the use of any  
34 information which is obtained from ~~any employing unit, an employer,~~  
35 individual, or unit of government pursuant to the administration of this  
36 Chapter or G.S. 108A-29. (ii) Any claimant or employer or their legal  
37 representatives shall be supplied with information from the records of the  
38 Division to the extent necessary for the proper presentation of claims or  
39 defenses in any proceeding under this Chapter. Notwithstanding any other  
40 provision of law, any claimant may be supplied, subject to restrictions as the  
41 Division may by regulation prescribe, with any information contained in his  
42 payment record or on his most recent monetary determination, and any  
43 individual, as well as any interested employer, may be supplied with  
44 information as to the individual's potential benefit rights from claim records.  
45 (iii) Subject to restrictions as the Secretary may by regulation provide,  
46 information from the records of the Division may be made available to any  
47 agency or public official for any purpose for which disclosure is required by  
48 statute or regulation. (iv) The Division may, in its sole discretion, permit the  
49 use of information in its possession by public officials in the performance of  
50 their public duties. (v) The Division shall release the payment and the  
51 amount of unemployment compensation benefits upon receipt of a subpoena

1 in a proceeding involving child support. (vi) The Division shall furnish to  
 2 the State Controller any information the State Controller needs to prepare  
 3 and publish a comprehensive annual financial report of the State or to track  
 4 debtors of the State. (vii) The Secretary may disclose or authorize  
 5 redisclosure of any confidential information to an individual, agency, or  
 6 entity, public or private, consistent with the requirements enumerated in 20  
 7 C.F.R. Part 603 or any successor regulation and any written guidance  
 8 promulgated and issued by the U.S. Department of Labor consistent with 20  
 9 C.F.R. Part 603.

10 (2) Job Service Information. – (i) Except as hereinafter otherwise provided it is  
 11 unlawful for any person to disclose any information obtained by the Division  
 12 from workers, employers, applicants, or other persons or groups of persons  
 13 in the course of administering the State Public Employment Service  
 14 Program. Provided, however, that if all interested parties waive in writing  
 15 the right to hold such information confidential, the information may be  
 16 disclosed and used but only for those purposes that the parties and the  
 17 Division have agreed upon in writing. (ii) The Division shall make public,  
 18 through the newspapers and any other suitable media, information as to job  
 19 openings and available applicants for the purpose of supplying the demand  
 20 for workers and employment. (iii) The Labor Market Information Unit shall  
 21 collect, collate, and publish statistical and other information relating to the  
 22 work under the Division's jurisdiction; investigate economic developments,  
 23 and the extent and causes of unemployment and its remedies with the view  
 24 of preparing for the information of the General Assembly such facts as in the  
 25 Division's opinion may make further legislation desirable. (iv) Except as  
 26 provided by rules adopted by the Division, any information published  
 27 pursuant to this subdivision shall not be published in any manner revealing  
 28 the identity of the applicant or the ~~employing unit employer.~~

29 ...  
 30 (6) Nothing in this subsection (t) shall operate to relieve any claimant or  
 31 ~~employing unit employer~~ from disclosing any information required by this  
 32 Chapter or by regulations promulgated thereunder.

33 ...."

34 **SECTION 9.(c)** G.S. 96-16 reads as rewritten:

35 **"§ 96-16. Seasonal pursuits.**

36 (a) A seasonal pursuit is one which, because of seasonal conditions making it  
 37 impracticable or impossible to do otherwise, customarily carries on production operations only  
 38 within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a  
 39 calendar year. No pursuit shall be deemed seasonal unless and until so found by the Division;  
 40 except that ~~from March 27, 1953,~~ any successor under ~~G.S. 96-8(5)~~ G.S. 96-11.6 to a seasonal  
 41 pursuit shall be deemed seasonal unless such successor shall within 120 days after the  
 42 acquisition request cancellation of the determination of status of such seasonal pursuit;  
 43 provided further that this provision shall not be applicable to pending cases nor retroactive in  
 44 effect.

45 ...

46 (f) ...

47 (3) The maximum amount of benefits which a seasonal worker shall be eligible  
 48 to receive based on seasonal wages shall be an amount, adjusted to the  
 49 nearest multiple of one dollar (\$1.00), determined by multiplying the  
 50 maximum benefits payable in his benefit year, as provided in ~~G.S. 96-12(d)~~

of this Chapter, G.S. 96-14.4, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.

- (4) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in ~~G.S. 96-12(d) of this Chapter, G.S. 96-14.4~~, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.

- (5) In no case shall a seasonal worker be eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in ~~G.S. 96-12(d) of this Chapter, G.S. 96-14.4~~.

- (g) (1) All benefits paid to a seasonal worker based on seasonal wages shall be ~~charged, as prescribed in G.S. 96-9(e)(2) of this Chapter,~~ charged against the account of his base period employer or employers who paid him such seasonal wages, and for the purpose of this paragraph such seasonal wages shall be deemed to constitute all of his base period wages.

- (2) All benefits paid to a seasonal worker based on nonseasonal wages shall be ~~charged, as prescribed in G.S. 96-9(e)(2) of this Chapter,~~ charged against the account of his base period employer or employers who paid him such nonseasonal wages, and for the purpose of this paragraph such nonseasonal wages shall be deemed to constitute all of his base period wages.

...."

**SECTION 9.(d)** G.S. 96-18(g) reads as rewritten:

"(g) ...

- (3) The Division may collect the overpayments provided for in this subsection by one or more of the following procedures as the Division may, except as provided herein, in its sole discretion choose:

...

- c. Any person who has been found by the Division to have been overpaid under subparagraph ~~(1)~~ (2) above due to fraudulent nondisclosure or misrepresentation shall be liable to have ~~such the~~ sums deducted from future benefits payable to ~~him the person~~ under this Chapter. The amount deducted may be up to one hundred percent (100%) of that person's weekly benefit amount.

- d. Any person who has been found by the Division to have been overpaid under subparagraph (2) above due to nonfraudulent reasons shall be liable to have ~~such the~~ sums deducted from future benefits payable to ~~him the person~~ under this Chapter ~~in such amounts as the Division may by regulation prescribe but no such benefit payable the~~ amount deducted for any week shall be reduced by no more than fifty percent (50%) of that person's weekly benefit amount.

...."

**SECTION 9.(e)** G.S. 97-29(i) reads as rewritten:

**"§ 97-29. Rates and duration of compensation for total incapacity.**

- (i) Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured ~~wage in accordance with G.S. 96-8(22),~~ wage, as defined in G.S. 96-1, by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all

1 provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as  
2 herein provided."

3 **SECTION 10.** Chapter 120 of the General Statutes is amended by adding a new  
4 Article to read:

5 "Article 12R.

6 "Joint Legislative Oversight Committee on Unemployment Insurance.

7 **"§ 120-70.155. Creation and membership.**

8 (a) The Joint Legislative Oversight Committee on Unemployment Insurance is  
9 established. The Committee consists of eight members appointed as follows:

10 (1) Four members of the House of Representatives appointed by the Speaker of  
11 the House of Representatives.

12 (2) Four members of the Senate appointed by the President Pro Tempore of the  
13 Senate.

14 (b) The members serve for a term of two years. Members may complete a term of  
15 service on the Committee even if they do not seek reelection or are not reelected to the General  
16 Assembly, but resignation or removal from service in the General Assembly constitutes  
17 resignation or removal from service on the Committee. A member continues to serve until a  
18 successor is appointed. A vacancy shall be filled by the officer who made the original  
19 appointment.

20 **"§ 120-70.156. Purpose and powers of Committee.**

21 (a) Purpose. – The Joint Legislative Oversight Committee on Unemployment Insurance  
22 is directed to study and review all unemployment insurance matters, workforce development  
23 programs, and reemployment assistance efforts of the State. The following duties and powers,  
24 which are enumerated by way of illustration, shall be liberally construed to provide maximum  
25 review by the Committee of these matters:

26 (1) Study the unemployment insurance laws of North Carolina and the  
27 administration of those laws.

28 (2) Review the State's unemployment insurance laws to determine which laws  
29 need clarification, technical amendment, repeal, or other change to make the  
30 laws concise, intelligible, and easy to administer.

31 (3) Monitor the payment of the debt owed by the Unemployment Trust Fund to  
32 the federal government.

33 (4) Review and determine the adequacy of the balances in the Unemployment  
34 Trust Fund and the Unemployment Insurance Reserve Fund.

35 (5) Study the workforce development programs and reemployment assistance  
36 efforts of the Division of Workforce Solutions of the Department of  
37 Commerce.

38 (6) Call upon the Department of Commerce to cooperate with it in the study of  
39 the unemployment insurance laws and the workforce development efforts of  
40 the State.

41 (b) The Committee may report its findings and recommendations to any regular session  
42 of the General Assembly. A report to the General Assembly may contain any legislation needed  
43 to implement a recommendation of the Committee.

44 **"§ 20-70.157. Organization of Committee.**

45 The Speaker of the House of Representatives shall designate one representative as cochair,  
46 and the President Pro Tempore of the Senate shall designate one senator as cochair. The Joint  
47 Legislative Oversight Committee on Unemployment Insurance may meet upon the joint call of  
48 the cochairs. A quorum of the Committee is five members.

49 The Committee may meet in the Legislative Building or the Legislative Office Building.  
50 While in the discharge of its official duties, the Committee has the powers of a joint committee  
51 under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Legislative Services

1 Commission, through the Legislative Services Officer, shall assign professional staff to assist  
2 the Committee in its work. The House of Representatives and the Senate's Directors of  
3 Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to  
4 the clerical employees shall be borne by the Committee. The Committee may contract for  
5 professional, clerical, or consultant services as provided by G.S. 120-32.02. Members of the  
6 Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1,  
7 138-5, or 138-6, as appropriate.

8 **"§ 20-170.158. Sunset.**

9 This Article expires July 1, 2023."

10 **SECTION 12.** This act becomes effective July 1, 2013. Changes made by this act  
11 to unemployment benefits apply to claims for benefits filed on or after July 1, 2013. Changes  
12 made by this act to require an account balance by an employer that is a governmental entity or a  
13 nonprofit organization and that elects to finance benefits by making reimbursable payments in  
14 lieu of contributions apply to advance payments payable for calendar quarters beginning on or  
15 after July 1, 2013. Changes made by this act to the determination and application of the  
16 contribution rate apply to contributions payable for calendar quarters beginning on or after  
17 January 1, 2014.