

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015**

**SESSION LAW 2015-238  
SENATE BILL 15**

AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE, AND TO CONFIRM APPOINTMENTS TO THE BOARD OF REVIEW.

The General Assembly of North Carolina enacts:

**PART I. ENHANCE UI PROGRAM INTEGRITY/REPORTING**

**SECTION 1.** Chapter 96 of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Miscellaneous Provisions.

**"§ 96-36. Unemployment insurance program integrity; reporting.**

(a) Findings and Purpose. – The General Assembly finds that program integrity measures have been implemented by the Division to maximize the efficiency and effectiveness of the State's unemployment insurance program. The purpose of this section is to assure that these efforts shall include the rigorous and consistent use of business intelligence and data analytics for enhanced unemployment insurance program integrity.

(b) Required Activities. – To achieve the program integrity enhancements required by this section, at a minimum, the Division shall do all of the following:

- (1) Prioritize Division program integrity efforts that maximize utilization of and information sharing with or between these projects and initiatives in order to prevent, detect, and reduce unemployment insurance fraud, improper payments, overpayments, and other programmatic irregularities:
  - a. Government Data Analytics Center (GDAC);
  - b. Southeast Consortium Unemployment Insurance Benefits Initiative (SCUBI); and
  - c. Any other program integrity capabilities identified by the Division.
- (2) Coordinate efforts with the Office of Information Technology Services to ensure that the Division identifies and integrates into its operations and procedures the most effective and accurate processes and scalable tools available to prevent payment of fraudulent, suspicious, or irregular claims.
- (3) Coordinate efforts with the Department of Revenue to enhance alerts indicating circumvention of the payment of unemployment insurance taxes.
- (4) Coordinate efforts with the Department of Health and Human Services to facilitate claims cross-matching and other appropriate steps to enhance program integrity.
- (5) Coordinate efforts with the Office of State Controller to facilitate cross-matching and other appropriate steps using BEACON (Building Enterprise Access for North Carolina's Core Operation Needs).

(c) Quarterly Reporting. – Beginning October 1, 2015, and then quarterly thereafter, the Division shall make detailed written progress reports on its efforts to carry out all of the directives in this section to the chairs of the Joint Legislative Oversight Committee on Unemployment Insurance, the chairs of the Joint Legislative Oversight Committee on Information Technology, the chairs of the House Appropriations Subcommittee on Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division. At a minimum, the quarterly report shall include all of the following:



- (1) Metrics regarding unemployment benefits overpayments, improper payments, and fraudulent payments, in terms of both percentage and dollar amount.
  - (2) Information on fraud perpetrator metrics, in terms of percent and value, by type (whether by employer or claimant), and activity subcategory, such as employee misclassification, unemployment insurance tax rate manipulation (SUTA dumping), fictitious employers, fictitious claimants, deceased claimants, incarcerated claimants, work and earn, and similar activities.
  - (3) Quantified investigation activity, including the following:
    - a. Type and subcategory of investigations.
    - b. Number of alerts received during the quarter.
    - c. Number of alerts investigated during the quarter.
    - d. Number of false positives.
    - e. Number of dispositions entered.
- (d) Annual Reporting. – Beginning January 1, 2016, the Division shall make an annual report to the General Assembly on its efforts to carry out all of the directives in this section. At a minimum, each annual report shall include all of the following information:
- (1) The methodology used by the Division to determine analytic priorities for unemployment insurance program integrity investigation.
  - (2) A report on the State's Benefit Accuracy Measurement (BAM) as required by the U.S. Department of Labor, including how North Carolina's BAM has changed over time and how its current rate compares to other states. The report shall also include an update on BAM methodology and information regarding how it might be modified.
  - (3) An explanation of the Division's unemployment insurance program integrity activities in coordination with the Office of Information Technology Services, the Department of Health and Human Services, the Department of Revenue, and the Office of State Controller as required by subsection (b) of this section.
  - (4) Division workflows, both intra-agency and interagency, to address process problems and program integrity issues, including identification of tools, resources, and plans for continued improvement of unemployment insurance program integrity efforts.
  - (5) An analysis of the information required by subsection (c) of this section, along with an explanation of how that information will be used to augment the State's business intelligence and data analytics capabilities to prevent, detect, and reduce unemployment insurance fraud, improper payments, overpayments, and other programmatic irregularities."

## **PART II. UNEMPLOYMENT INSURANCE LAW CHANGES**

**SECTION 2.1.** G.S. 20-7(b2) is amended by adding a new subdivision to read:

"(b2) **Disclosure of Social Security Number.** – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

- ...
- (7) To the Department of Commerce, Division of Employment Security, for the purpose of verifying employer and claimant identity."

**SECTION 2.2.(a)** G.S. 96-14.9(e) reads as rewritten:

"(e) **Actively Seeking Work.** – The Division's determination of whether an individual is actively seeking work is based upon the following:

- (1) The individual is registered for employment services, as required by the Division.
- (2) The individual has engaged in an active search for employment that is appropriate in light of the employment available in the labor market and the individual's skills and capabilities.

- (3) The individual has ~~sought work on at least two different days during the week and~~ made at least ~~two~~ five job contacts with potential ~~employers~~ employers during the week.
- (4) The individual has maintained a record of the individual's work search efforts. The record must include the potential employers contacted, the method of contact, and the date contacted. The individual must provide the record to the Division upon request."

**SECTION 2.2.(b)** This section becomes effective January 1, 2016, and applies to claims for benefits filed on or after that date.

**SECTION 2.3.(a)** G.S. 96-15(h) reads as rewritten:

"(h) Judicial Review. – ~~Any A~~ decision of the ~~Division, in the absence of judicial review as herein provided, or in the absence of an interested party filing a request for reconsideration, shall become~~ Board of Review becomes final 30 days after the date of ~~notification or mailing thereof, whichever is earlier.~~ unless a party to the decision seeks judicial review as provided in this subsection. Judicial review ~~shall be~~ is permitted only after a party claiming to be aggrieved by the decision has exhausted ~~his remedies before the Division as provided in this Chapter~~ the remedies provided in this Chapter and has filed a petition for review in the superior court of the county in which ~~he~~ the petitioner resides or ~~has his~~ the county in which the petitioner's principal place of business. ~~business is located.~~ The petition for review ~~shall~~ must explicitly state what exceptions are taken to the decision or procedure ~~of the Division~~ and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner ~~shall~~ must serve copies of the petition by personal service or by certified mail, return receipt requested, upon the Division and upon all parties of record to the Division proceedings. The Division must furnish the petitioner the names ~~Names~~ and addresses of the parties ~~shall be furnished to the petitioner by the Division upon request.~~ The Division ~~shall be deemed to be~~ is a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. Any questions regarding the requirements of this subsection concerning the service or filing of a petition shall be determined by the superior court. Any party to the Division proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the Division ~~shall~~ must transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for ~~such~~ the additional cost as ~~is~~ occasioned ~~incurred~~ by the refusal. The court may require or permit subsequent corrections or additions to the record when ~~deemed~~ the court considers the changes desirable."

**SECTION 2.3.(b)** This section becomes effective October 1, 2015, and applies to decisions made on or after that date.

**SECTION 2.4.(a)** G.S. 96-3 reads as rewritten:

**"§ 96-3. Division of Employment Security.**

The Division of Employment Security (DES) is created within the Department of Commerce and shall administer the provisions of this Chapter under the supervision of the Assistant Secretary of ~~Commerce through two coordinate sections: the Employment Security Section and the Employment Insurance Section.~~ The Employment Security Section shall administer the employment services functions of the Division. The Employment Insurance Section shall administer the unemployment taxation and assessment functions of the Division. ~~Commerce."~~

**SECTION 2.4.(b)** G.S. 96-4(j) reads as rewritten:

"(j) Hearings. – The Assistant Secretary shall appoint hearing officers or appeals referees to hear contested matters arising from the ~~Employment Security Section and the Employment Insurance Section.~~ Division of Employment Security. Appeals from the decisions of the hearing officers or appeals referees shall be heard by the Board of Review."

**SECTION 2.4.(c)** G.S. 96-9.15(f) reads as rewritten:

"(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~~ Division of Employment Security in Raleigh and report the required information to that auditor or to that section by the date the report is due."

**SECTION 2.5.(a)** G.S. 1-359 reads as rewritten:

**"§ 1-359. Debtors of judgment debtor may satisfy execution.**

(a) After the issuing of an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the sheriff's receipt is a sufficient discharge for the amount paid.

(b) When the Division of Employment Security of the Department of Commerce (Division) prevails in a civil action against an employer to collect unpaid employment taxes under G.S. 96-10(b), the Division may attach or garnish the employer's credit card receipts or other third-party payments in payment of the unpaid taxes in the manner provided by subsection (a) of this section. Direct receipt by the Division is a sufficient discharge for the amount paid by a credit card company, clearinghouse, or third-party payment processor."

**SECTION 2.5.(b)** G.S. 96-10 reads as rewritten:

**"§ 96-10. Collection of contributions.**

...  
(b) Collection. –

(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Division, under the hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars (\$50.00), the Division may not certify the amount to the clerk of court until a field tax auditor or another representative of the Division personally contacts, or unsuccessfully attempts to personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Division may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Division for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly

authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Division for service the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the contributions, penalty, interest, and costs due by the employer. Any judgment that is executable and allowed under this section shall be subject to attachment and garnishment under G.S. 1-359(b) in payment of unpaid taxes that are due from the employer and collectable under this Article.

...

(i) Except as otherwise provided in this subsection, no suit or proceedings for the collection of unpaid contributions may be begun under this Chapter after five years from the date on which the contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which the suit or proceeding is instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this Chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the ~~Assistant Secretary of the Division~~ Board of Review directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by certified mail to the last known address of the employing unit. The order shall be deemed to have been issued on the date the order is mailed by certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or collection shall, in a case under Title II of the United States Code, be suspended for the period during which the Division is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed.

...."

**SECTION 2.6.** G.S. 96-14.9 reads as rewritten:  
**"§ 96-14.9. Weekly certification.**

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

- (1) File a claim for benefits.

- (2) Report ~~at an employment office~~ as requested by the ~~Division~~ Division and present valid photo identification meeting the requirements of subsection (k) of this section.
- (3) Meet the work search requirements of subsection (b) of this section.

...  
(k) Photo Identification. – The individual must present the Division one of the following documents bearing the individual's photograph:

- (1) A drivers license, learner's permit, provisional license, or nonoperator's identification card issued by North Carolina, another state, the District of Columbia, United States territory, or United States commonwealth.
- (2) A United States passport.
- (3) A United States military identification card.
- (4) A Veterans Identification Card issued by the United States Department of Veterans Affairs.
- (5) A tribal enrollment card issued by a federally recognized tribe.
- (6) Any other document that the Division determines adequately identifies the individual and that is issued by the United States, any state, the District of Columbia, United States territory, or United States commonwealth.
- (7) A traveler card issued by the U.S. Department of Homeland Security, such as the NEXUS SENTRI and FAST CARDS."

**SECTION 2.7.** Section 1.10(c) of S.L. 2011-401 reads as rewritten:

**"SECTION 1.10.(c)** The Department of Commerce, Division of Employment Security, shall adopt ~~all existing~~ rules and regulations in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted and filed with the Rules Review Commission by December 31, 2012, May 20, 2015, shall expire."

**SECTION 2.8.(a)** G.S. 96-14.4 is repealed.

**SECTION 2.8.(b)** G.S. 96-14.3 reads as rewritten:

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

(a) Duration. – The ~~minimum and maximum~~ number of weeks an individual is allowed to receive unemployment benefits depends on the seasonal adjusted statewide unemployment rate that applies to the six-month base period in which the claim is filed. One six-month base period begins on January 1 and one six-month base period begins on July 1. For the base period that begins January 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of July, August, and September applies. For the base period that begins July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of January, February, and March applies. The Division must use the most recent seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and not the rate as revised in the annual benchmark. ~~The number of weeks allowed for an individual is determined in accordance with G.S. 96-14.4.~~

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

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

**SECTION 2.8.(c)** G.S. 96-14.12(b) reads as rewritten:

(b) Duration of Benefits. – This subsection applies to an individual and the spouse of an individual who is unemployed based on services performed for a corporation in which the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation. The maximum number of weeks an individual or an individual's spouse may

receive benefits is ~~limited to the lesser of six weeks or the applicable weeks determined under G.S. 96-14.4 weeks.~~"

**SECTION 2.8.(d)** G.S. 96-16(f) reads as rewritten:

- "(f) (1) A seasonal worker shall be eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs within the active period or periods of the seasonal pursuit or pursuits in which he earned base period wages.
- (2) A seasonal worker shall be eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period or periods of the seasonal pursuit in which he has earned base period wages provided he has exhausted benefits based on seasonal wages. Such worker shall also be eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during the inactive period or periods of the seasonal pursuit in which he earned base period wages irrespective as to whether he has exhausted benefits based on seasonal wages.
- (3) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on seasonal 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. 96-14.4,~~ G.S. 96-14.3, 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. 96-14.4,~~ G.S. 96-14.3, 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. 96-14.4.~~G.S. 96-14.3."

**SECTION 2.8.(e)** This section becomes effective July 1, 2015.

**SECTION 2.9.** G.S. 96-15 reads as rewritten:

"§ 96-15. **Claims for benefits.**

...

- (b) ...
- (2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant, or whether any disqualification should be imposed, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed 14 days from the mailing or delivery of the notice of the filing of a claim against the employer's account, whichever first occurs, to file with the Division its protest of the claim in order to have the claim referred to an adjudicator for a decision on the question or issue raised. Any protest filed must contain a basis for the protest and supporting statement of facts, and the protest may not be amended after the 14-day period from the mailing or delivery of the notice of filing of a claim has expired. ~~A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a~~

~~fax number is on file.~~ No payment of benefits shall be made by the Division to a claimant until one of the following occurs:

- a. The employer has filed a timely protest to the claim.
- b. The 14-day period for the filing of a protest by the employer has expired.
- c. A determination under this subdivision has been made.

Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant, or whether any disqualification should be imposed, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

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

...  
(d1) No continuance shall be granted except upon application to the Division, the appeals referee, or other authority assigned to make the decision in the matter to be continued. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause the Division by rule shall provide. Acceptable grounds for granting a continuance shall include, but not be limited to, those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State, such as service as a member of the North Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater jurisdiction.  
...."

**SECTION 2.10.(a)** G.S. 96-14.1(b) reads as rewritten:

"(b) Valid Claim. – To obtain benefits, an individual must file a valid claim for unemployment ~~benefits and benefits~~, register for ~~work~~ work, and have a weekly benefit amount calculated pursuant to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00). An individual must serve a one-week waiting period for each claim filed. A valid claim is one that meets the employment and wage standards in this subsection for the individual's base period. A valid claim for a second benefit year is one that meets the employment and wage standards in this subsection since the beginning date of the prior benefit year and before the date the new benefit claim is filed:

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

**SECTION 2.10.(b)** This section is effective when it becomes law and applies to benefit claims filed on or after October 4, 2015.

### **PART III. DIVISION OF EMPLOYMENT SECURITY BOARD OF REVIEW**

**SECTION 3.1.(a)** Notwithstanding the appointment provisions in G.S. 96-4(b) and in G.S. 96-15.3, as enacted by this act, and to achieve the staggered terms provided in G.S. 96-15.3, as enacted by this act, Jeanette Doran, appointed by the Governor in December 2013 to serve on the Board of Review as the member that represents the general public, is confirmed to serve on the Board of Review for the term beginning upon appointment and expiring on June 30, 2015. In accordance with G.S. 96-15.3, as enacted by this act, the term beginning July 1, 2015, will expire on June 30, 2019.

**SECTION 3.1.(b)** Notwithstanding the appointment provisions in G.S. 96-15.3, as enacted by this act, Jeanette Doran, appointed by the Governor in December 2013 to serve on

the Board of Review as the member that represents the general public, is confirmed to serve on the Board of Review for the term beginning July 1, 2015, and expiring on June 30, 2019.

**SECTION 3.1.(c)** Notwithstanding the appointment provisions in G.S. 96-4(b) and in G.S. 96-15.3, as enacted by this act, and to achieve the staggered terms provided in G.S. 96-15.3, as enacted by this act, Keith Holliday, appointed by the Governor in December 2013 to serve on the Board of Review as the member that represents employers, is confirmed to serve on the Board of Review for the term beginning upon appointment and expiring on June 30, 2016. In accordance with G.S. 96-15.3, as enacted by this act, the term beginning on July 1, 2016, will expire on June 30, 2020.

**SECTION 3.1.(d)** Notwithstanding the appointment provisions in G.S. 96-4(b) and in G.S. 96-15.3, as enacted by this act, Stanley Campbell, appointed by the Governor in December 2013 to serve on the Board of Review as the member that represents employees, is confirmed to serve on the Board of Review for the term beginning upon appointment and expiring on June 30, 2017. In accordance with G.S. 96-15.3, as enacted by this act, the term beginning on July 1, 2017, will expire on June 30, 2021.

**SECTION 3.2.(a)** The following decisions in an appeal by a party to a decision of an appeals referee or hearing officer under Chapter 96 of the General Statutes are hereby validated and given the same legal effect as if those decisions had been issued by the Board of Review (BOR):

- (1) Decisions issued by the Assistant Secretary of Commerce for the Division of Employment Security or by the Secretary of Commerce's designee.
- (2) Decisions issued by the three individuals appointed by the Governor in December 2013 to serve as members of the BOR.

**SECTION 3.2.(b)** This section is effective when it becomes law and applies to decisions rendered on or after November 1, 2011.

**SECTION 3.3.(a)** G.S. 96-4(b) and Section 21 of S.L. 2013-224 are repealed.

**SECTION 3.3.(b)** Article 2D of Chapter 96 of the General Statutes is amended by adding a new section to read:

**"§ 96-15.3. Board of Review.**

(a) Purpose. – The Board of Review (BOR) is created to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Division. The Department of Commerce must assign staff to the BOR. The BOR and its staff must perform their job responsibilities independent of the Governor, the General Assembly, the Department, and the Division and in accordance with any written guidance promulgated and issued by the U.S. Department of Labor.

(b) Members. – The BOR consists of three members appointed by the Governor and subject to confirmation by the General Assembly as provided in subsection (c) of this section. One member must be classified as representative of employees, one member must be classified as representative of employers, and one member must be classified as representative of the general public. The member appointed to represent the general public will serve as chair of the BOR and must be a licensed attorney in this State.

Members of the BOR serve staggered four-year terms. A term begins on July 1 of the year of appointment and ends on June 30 of the fourth year. No individual may serve more than two terms on the BOR. In calculating the number of terms served, a partial term that is less than 24 months in length will not be included. The General Assembly must set the annual salaries of the BOR in the current Operations Appropriations Act.

(c) Confirmation. – Appointments of members to serve on the BOR are subject to confirmation by the General Assembly by joint resolution. The Governor must submit the name of the individual the Governor wants to appoint to the BOR to the General Assembly for confirmation on or before May 1 of the year of the expiration of the term. If the General Assembly does not confirm the appointment by May 30, the office will be considered vacant and must be filled in accordance with subsection (d) of this section. The Governor may not resubmit the name of the nominee whom the General Assembly did not confirm for the office. If the Governor fails to timely submit a nomination, the General Assembly will appoint to fill the succeeding term as provided in subsection (e) of this section.

(d) Vacancies. – For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the regular session, (ii) during any adjournment of the regular session for more than 10 days, and (iii) after sine die adjournment of the regular

session. A vacancy in an office of the BOR prior to the expiration of the term of office must be filled in accordance with this subsection:

- (1) During legislative session. – If a vacancy in an office arises or exists when the General Assembly is in session, the Governor must submit the name of the individual to be appointed to fill the vacancy for the remainder of the unexpired term within 30 days after the vacancy arises to the General Assembly for confirmation by the General Assembly. If the General Assembly does not confirm the appointment within 30 days after the General Assembly receives the nomination, the office will be considered vacant and must be filled in accordance with this subsection. The Governor may not resubmit the name of the nominee whom the General Assembly did not confirm for the vacancy. If the Governor fails to timely submit a nomination, the General Assembly will appoint to fill the vacancy as provided in subsection (e) of this section.
- (2) During legislative interim. – If a vacancy in an office arises or exists when the General Assembly is not in session, the Governor must appoint an individual to that office to serve on an interim basis pending confirmation by the General Assembly. The Governor must submit the name of the individual to be appointed to fill the vacancy for the remainder of the unexpired term to the General Assembly for confirmation within 14 days of the date the General Assembly convenes or reconvenes for the next regular session. If the Governor fails to timely submit a nomination, the General Assembly will appoint to fill the vacancy as provided in subsection (e) of this section.

(e) Legislative Appointments. – If the Governor fails to timely submit the name of an individual to be appointed to the BOR as provided in this section, then the General Assembly may appoint an individual to fill the vacancy in accordance with G.S. 120-121 and the provisions of this subsection. If the vacancy occurs in an odd-numbered year, the appointment is made upon the recommendation of the President Pro Tempore of the Senate. If the vacancy occurs in an even-numbered year, the appointment is made upon the recommendation of the Speaker of the House of Representatives."

**SECTION 3.4.** The Joint Legislative Program Evaluation Oversight Committee shall include in the 2015-2017 Work Plan for the Program Evaluation Division of the General Assembly a study of the value provided to the State by the Board of Review (BOR). The Division shall report its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee and to the Joint Legislative Oversight Committee on Unemployment Insurance by March 1, 2016. The study should include the following:

- (1) A cost-benefit analysis of the State provision of a higher level of appeal of decisions for the Division of Employment Security through the BOR:
  - a. Annual costs of the BOR.
  - b. Number of cases handled annually by the BOR.
  - c. Average time for BOR to process a case.
  - d. Cost per case.
  - e. Number and percentage of BOR decisions differing from the initial decision.
  - f. Average percentage distribution of time BOR staff members spend on BOR tasks and tasks unrelated to BOR.
  - g. Independence of BOR staff from budgetary control, direction, or override by non-BOR agency employees and officers.
- (2) A comparison to other states with BOR functions on the same factors enumerated in subdivision (1) of this section.
- (3) A determination of how the cost of BOR compares to the monetary value derived from the BOR appeals function.
- (4) A determination if BOR resources could be applied more efficiently and effectively to provide equivalent value to the State.
- (5) An identification of noneconomic or nonquantifiable justifications, if any, of a BOR function.
- (6) Any Program Evaluation Division recommendations for administrative or legislative consideration.

## **PART IV. TAX CHANGES**

**SECTION 4.1.(a)** G.S. 96-9.2(c) reads as rewritten:

"(c) Contribution Rate for Experience-Rated Employer. – The contribution rate for an experience-rated employer who does not qualify as a beginning employer under subsection (b) of this section is determined in accordance with the table set out below and then rounded to the nearest one-hundredth percent (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~~ June 30 preceding the computation date. An employer's experience rating is computed as a reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate.  
...."

**SECTION 4.1.(b)** This section is effective when it becomes law and applies to contributions payable for calendar quarters beginning on or after January 1, 2014.

**SECTION 4.2.(a)** G.S. 96-11.2 reads as rewritten:

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

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

**SECTION 4.2.(b)** This section becomes effective January 3, 2016, and applies to claims effective on or after that date. Claims filed prior to January 3 will be charged annually when the benefit year for that claim ends.

**SECTION 4.3.** Notwithstanding G.S. 96-9.7(b), the surtax imposed under G.S. 96-9.7 does not apply to the calendar year 2016 if the amount in the State's account in the Unemployment Trust Fund as of March 1, 2016, equals or exceeds one billion dollars (\$1,000,000,000).

## **PART V. EFFECTIVE DATE**

**SECTION 5.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31<sup>st</sup> day of August, 2015.

s/ Tom Apodaca  
Presiding Officer of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 9:22 a.m. this 10<sup>th</sup> day of September, 2015