

NORTH CAROLINA GENERAL ASSEMBLY  
1977 SESSION

CHAPTER 727  
SENATE BILL 468

AN ACT TO AMEND CHAPTER 96 OF THE GENERAL STATUTES KNOWN AS THE EMPLOYMENT SECURITY LAW TO CONFORM WITH FEDERAL REQUIREMENTS, TO MAKE TECHNICAL IMPROVEMENTS AND CORRECTIONS, AND TO REMOVE OUTDATED AND INCONSISTENT PROVISIONS FROM THE LAW.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 96-1, as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by adding the following sentence at the end thereof:

"Any reference to the Unemployment Compensation Commission shall be deemed a reference to the Employment Security Commission and all powers, duties, funds, records, etc., of the Unemployment Compensation Commission are transferred to the Employment Security Commission."

**Sec. 2.** G.S. 96-1.1 is deleted in its entirety.

**Sec. 3.** G.S. 96-1.2 is deleted in its entirety.

**Sec. 4.** G.S. 96-1.3 is deleted in its entirety.

**Sec. 5.** G.S. 96-1.4 is deleted in its entirety.

**Sec. 6.** G.S. 96-1.5 is deleted in its entirety.

**Sec. 7.** G.S. 96-3(b), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended by adding the following sentence to the end thereof:

"Notwithstanding any other provision of this Chapter, administrative organization of the agency shall be in accordance with that which the commission finds most desirable in order to perform the duties and functions of the agency."

**Sec. 8.** G.S. 96-4(h), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended on line 2 by deleting the words "of an appeal tribunal".

**Sec. 9.** G.S. 96-4(m), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended as follows:

(a) By deleting the sentence beginning on line 10 with the word "Hearings" and replacing it with the following:

"Hearings may be before the Commission or a Deputy Commissioner and shall be held in the central office of the Commission or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Commission and a determination of the law applicable to that evidence."

(b) On lines 17 and 18 by deleting the words "stenographically reported" and inserting the word "recorded" in lieu thereof.

(c) On line 23 by deleting the words "in Raleigh."

(d) On line 24 by adding after the word "Commission" the words "or a Deputy Commissioner".

(e) On line 45 by deleting the colon at the end of the word "business", and adding the following: ",or, unless the appellee objects after being given reasonable opportunity to object, to a Judge of the Superior Court of Wake County:".

**Sec. 10.** G.S. 96-4(q), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is rewritten to read as follows:

"Notices of hearing shall be issued by the Commission or its authorized representative and sent by registered mail, return receipt requested, to the last known address of any employing unit, employers, persons, or firms involved. The notice shall be sent at least 10 days prior to the hearing date and shall contain notification of the place, date, hour, and purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the Commission or its authorized representative and shall order him to appear at the time, date and place shown thereon. Any bond or other undertaking required to be given in order to suspend or stay any execution shall be given payable to the Employment Security Commission of North Carolina. Any such bond or other undertaking may be forfeited or sued upon as are any other undertakings payable to the State."

**Sec. 11.** G.S. 96-5(a), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended:

- (a) On line 9 by changing the citation from G.S. 143-35 et seq. to G.S. 126-1 et seq.
- (b) On line 26 by deleting the following: "subsequent to June 30, 1947,".

**Sec. 12.** G.S. 96-5(b), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended:

- (a) On line 2 by deleting the following: "after June 30, 1941."
- (b) On line 4 by deleting the words "as of that date" and the words "after that date".
- (c) By deleting the last sentence thereof in its entirety.
- (d) The citation in line 22 of subsection (c) of G.S. 96-5, "G.S. 143-35" is removed and replaced by the citation "G.S. 126-1".

**Sec. 13.** G.S. 96-5, as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended by adding a new subsection (e) to read as follows:

**(e) Reed Bill Fund Authorization.**

Subject to a specific appropriation by the General Assembly of North Carolina to the Employment Security Commission out of funds credited to and held in this State's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with Section 903 of the Social Security Act, the Commission is authorized to utilize such funds for the administration of the Employment Security Law, including personal services, operating and other expenses incurred in the administration of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings or parts of buildings, suitable for use in this State by the Employment Security Commission, and for the payment of expenses incurred for the construction, maintenance, improvements or repair of, or alterations to, such real or personal property. Provided, that any such funds appropriated by the General Assembly shall not exceed the amount in the Unemployment Trust Fund which may be obligated for expenditure for such purposes; and provided that said funds shall not be obligated for expenditure, as herein provided, after the close of the two-year period which begins on the effective date of the appropriation."

**Sec. 14.** G.S. 96-8(4), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended on lines 5 and 6 by deleting the following: ", on or subsequent to January 1, 1936," and inserting in lieu thereof the word "or".

**Sec. 15.** G.S. 96-8(5)a., as it appears in the 1975 Supplement to Volume 2C of the General Statutes, is amended:

- (a) By deleting the first seven lines thereof.

(b) On line 8 by deleting the words "'employer' means" and by capitalizing the word "any".

**Sec. 16.** G.S. 96-8(5)g., as it appears in the 1975 Supplement to Volume 2C of the General Statutes, is amended by deleting the first seven lines thereof and inserting in lieu thereof the following: "Any employing unit with its principal place of business located outside the State of North Carolina which engages in business within the State of North Carolina and which".

**Sec. 17.** G.S. 96-8(5)i., as it appears in the 1975 Supplement to Volume 2C of the General Statutes, is amended on line 1 by deleting the following: ", after July 1, 1961,".

**Sec. 18.** G.S. 96-8(5)j., as it appears in the 1975 Supplement to Volume 2C of the General Statutes of North Carolina, is amended:

(a) On lines 1 and 2 by deleting the following: "and on and after January 1, 1972,".

(b) By deleting the last sentence therefrom.

**Sec. 19.** G.S. 96-8(5)k., as it appears in the 1975 Supplement to Volume 2C of the General Statutes, is amended on lines 1 and 2 by deleting the following: "and on and after January 1, 1972,".

**Sec. 20.** G.S. 96-8(5), as it appears in the 1975 Supplement to Volume 2C of the General Statutes of North Carolina, is amended as follows:

(a) By adding a new paragraph n. to read as follows:

"n. With respect to employment on and after January 1, 1978, any person or employing unit who (a) during any calendar quarter in the current calendar year or the preceding calendar year paid wages of twenty thousand dollars (\$20,000) or more for agricultural labor, or (b) on each of some 20 days during the current or preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day. Provided, that with respect to agricultural labor performed by a crew on and after January 1, 1978, the crew leader shall be deemed an employer if (1) either of the requirements set forth in the first sentence of this paragraph are met; and (2) the crew members are not employed by another person within the meaning of the first sentence of this paragraph; (3) and if the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader. For purposes of this paragraph, the term 'crew leader' means an individual who (1) furnishes individuals to perform agricultural labor for any other person, (2) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and (3) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person."

(b) By adding a new paragraph o. to read as follows:

"o. With respect to employment on and after January 1, 1978, any person who during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of one thousand dollars (\$1,000) or more for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority."

(c) By adding a new paragraph p. to read as follows:

"p. With respect to employment on and after January 1, 1978, any state and local governmental employing unit, including the State of North Carolina, a county board of education, a city board of education, the State Board of Education, the Board of Trustees of The University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, any other agency of and within the State by which a teacher or other employee is paid, and any county, incorporated city or town, the light and water board or commission of any incorporated city or town, the board of alcoholic control of any county or incorporated city or town, county and/or city airport authorities, housing authorities created and operated under and by virtue of Chapter 157 of the General Statutes, redevelopment commissions created and operated under and by virtue of Article 37, Chapter 160 of the General Statutes, county and/or city or regional libraries, county and/or city boards of health, district boards of health, any other separate, local governmental entity, and the retirement system."

(d) By adding a new paragraph q. to read as follows: "q. With respect to employment on and after January 1, 1978, any nonprofit elementary and secondary school."

**Sec. 21.** G.S. 96-8(6)a., as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended:

(a) On line 1 by deleting the words and punctuation beginning with the word "prior" through the end of the line.

(b) By deleting all of line 2 thereof.

(c) On line 3 by deleting the following: "date, and any service performed after December 31, 1948,".

**Sec. 22.** G.S. 96-8(6)f.4., as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended on lines 1 and 2 by deleting the following therefrom: "after December 31, 1961,".

**Sec. 23.** G.S. 96-8(6)f.5., as it appears in the 1975 Replacement Volume 2C of the General Statutes, is hereby amended on line 2 by deleting the following: "on and after January 1, 1972,".

**Sec. 24.** G.S. 96-8(6)f., as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by adding a new paragraph 7. at the end thereof to read as follows:

"7. Services with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a State unemployment insurance fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this Chapter."

**Sec. 25.** G.S. 96-8(6)f.6., as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended on line 3 by deleting the following therefrom: "after December 31, 1971,".

**Sec. 26.** G.S. 96-8(6), as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended:

(a) By rewriting subdivision g. thereof to read as follows:

"g. On and after January 1, 1978, the term 'employment' includes services performed in agricultural labor when a person or employing unit (a) during any calendar quarter in the current calendar year or

the preceding calendar year pays wages of twenty thousand dollars (\$20,000) or more for agricultural labor, or (b) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employs at least 10 individuals in employment in agricultural labor for some portion of the day. For purposes of this Chapter, the term 'agricultural labor' includes all services performed: (1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife; (2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (3) in connection with the production or harvesting of crude gum (oleoresin) from a living tree, and the following products if processed by the original producer of crude gum from which derived; gum spirits of turpentine and gum resin, or in connection with the ginning of cotton or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; or (4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one half of the commodity with respect to which such service is performed; (B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in performance of service described in subparagraph (A), but only if such operators produced more than one half of the commodity with respect to which such service is performed. (C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; (D) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. Provided, such labor is not agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act."

(b) By inserting a new sub-subdivision h. to read as follows:

"h. On and after January 1, 1978, the term 'employment' includes domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who pays cash remuneration of one thousand dollars (\$1,000) or more on or after January 1, 1978, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service."

(c) By inserting a new sub-subdivision i. to read as follows:

"i. On and after January 1, 1978, the term 'employment' includes service performed for any State and local governmental employing unit. Provided, however, that employment shall not include service performed (a) as an elected official; (b) as a member of a legislative body or a member of the judiciary, of a State or political subdivision thereof; (c) as a member of the State National Guard or Air National Guard; (d) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (e) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week."

(d) By adding a new sub-subdivision j. to read as follows:

"j. On and after January 1, 1978, the term 'employment' includes services performed in any calendar year by employees of nonprofit elementary and secondary schools."

**Sec. 27.** G.S. 96-8(6), as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by adding a new sub-subdivision k. thereto to read as follows:

"k. The term employment shall not include:

1. Prior to January 1, 1978, services performed in the employ of this State, or of any political subdivision thereof, or any instrumentality of this State or its political subdivisions except from and after January 1, 1972, services performed for employers as defined in G.S. 96-8(5)j., and G.S. 96-11(c)(3), and except as otherwise provided in this Chapter.

2. Except with respect to service performed for an employer as defined in G.S. 96-8(5)j., service performed prior to January 1, 1978, in the employ of any other state or its political subdivisions, or of the United States Government, or of an instrumentality of any other state or states or their political subdivisions or of the United States and service performed in the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Chapter, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this Chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, that if this State shall not be certified for any year

by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in G.S. 96-10(e) with respect to contributions erroneously collected.

3. Service with respect to which unemployment insurance is payable under an employment security system established by an act of Congress: Provided, that the Commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in G.S. 96-4(b) for general rules, to provide potential rights to benefits under this Chapter, acquired rights to unemployment insurance under act of Congress, or who have, after acquiring potential rights to unemployment insurance, under such act of Congress, acquired rights to benefits under this Chapter.
4. Prior to January 1, 1978, service performed in agricultural labor as defined in G.S. 96-8(6)g.
5. Prior to January 1, 1978, domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.
6. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if the individual is performing services on and in connection with such vessel or aircraft when outside the United States; or, service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, Crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by such individual as an ordinary incident to any such activity), except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (ii) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States).
7. Prior to January 1, 1978, services performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother; and on and after January 1, 1978, service performed by a child under the age of 21 in the employ of his father or mother or of a partnership consisting only of parents.
8. Service performed by an individual during any calendar quarter for any employing unit or an employer as an insurance agent or as an insurance solicitor, or as a securities salesman if all such service performed during such calendar

quarter by such individual for such employing unit or employer is performed for remuneration solely by way of commission; service performed by an individual for an employing unit as a real estate agent or a real estate salesman as defined in G.S. 93-A(2) (G.S. 93A-2), provided, that such real estate agent or salesman is compensated solely by way of commission and is authorized to exercise independent judgment and control over the performance of his work.

9. Services performed in employment as a newsboy selling or distributing newspapers or magazines on the street or from house to house.
10. Except as provided in G.S. 96-8(6)f5(a), service covered by an election duly approved by the agency charged with the administration of any other State or federal employment security law in accordance with an arrangement pursuant to subdivision (1) of G.S. 96-4 during the effective period of such election.
11. Casual labor not in the course of the employing unit's trade or business.
12. Service in any calendar quarter in the employ of any organization exempt from income tax under the provisions of Section 501(a) of the Internal Revenue Code of 1954 (other than an organization described in Section 401(a) of said Internal Revenue Code of 1954) or under Section 521 of the Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars (\$50.00).
13. Service in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance.
14. Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.
15. Services performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which

is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (iv) as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training, unless a federal law, rule or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program; (v) after December 31, 1971, by an inmate for a hospital in a State prison or other State correctional institution or by a patient in any other State-operated hospital, and services performed by patients in a hospital operated by a nonprofit organization shall be exempt; (vi) after December 31, 1971, in the employ of a hospital, if such service is performed by a patient of such hospital; (vii) after December 31, 1977, by an inmate of a custodial or penal institution."

**Sec. 28.** G.S. 96-8(9), as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is hereby rewritten to read as follows:

"(9) 'State' includes, in addition to the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands."

**Sec. 29.** G.S. 96-8(10), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is rewritten to read as follows:

"(10) Total and partial unemployment.

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If he has payroll attachment but, during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday of the calendar week within which the payroll week ending date falls.

2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission Regulation.

b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c. below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).
2. Partially unemployed, if he has payroll attachment but during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c. below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c. below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

c. No individual shall be considered unemployed if, with respect to the entire calendar week, he is receiving, has received, or will receive as a result of his separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a. and b. of this paragraph.

d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe."

**Sec. 30.** G.S. 96-8(12), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended on line 1 by deleting from and including the first word "From" through the comma after the date "1941" and by capitalizing the word "wages".

**Sec. 31.** G.S. 96-8(13)a., as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended as follows:

(a) On line 1 by deleting from and including the first word "From" through the comma after the date "1941" and by capitalizing the word "wages".

(b) By rewriting the second sentence thereof to read as follows:

"The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, including tips which an employee receives directly from a customer and reports to the employer and which the employer considers as salary for the purpose of meeting minimum wage requirements, shall be estimated and determined in accordance with rules prescribed by the Commission: Provided, if the remuneration of an individual is not based upon a fixed period of duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to unemployment benefits only shall be determined in such manner as may by authorized regulations be prescribed."

(c) By deleting from and including the word "performed" on line 20 through the comma after the date "1953" on line 21.

**Sec. 32.** G.S. 96-8(15), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended by replacing the comma at the end of line 2 with a period and deleting the remainder of that subsection.

**Sec. 33.** G.S. 96-8(17), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended by deleting present sub-subdivisions a. and b. and relettering sub-subdivision c. as a. and adding a new sub-subdivision b. to read as follows:

"b. As to claims filed on or after January 1, 1978, for claimants who did not have benefit years in progress, 'benefit year' shall mean the fifty-two week period beginning with the Sunday of the calendar week with respect to which an individual first registers for work and files a valid claim for benefits. The requirements of sub-subdivision a. above shall apply to such claims."

**Sec. 34.** G.S. 96-8(18), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended by rewriting the last sentence thereof to read as follows:

"For benefit years established on and after January 1, 1978, the term 'base period' shall mean the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in G.S. 96-8(17)."

**Sec. 35.** G.S. 96-8(19), as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended by deleting the entirety of this subdivision and renumbering the following subdivisions (20), (21), and (22) to be (19), (20), and (21), respectively.

**Sec. 36.** G.S. 96-8, as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, as amended in the 1975 Supplement to Volume 2C of the General Statutes, is hereby amended by adding a new subdivision (22) at the end thereof:

"(22) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subdivision, the term 'previously uncovered services' means services (a) which were not employment as defined in G.S. 96-8(6) and were not services covered pursuant to G.S. 96-11(c) at any time during the one-year period ending December 31, 1977; and (b) which (1) are agricultural labor as provided in G.S. 96-8(5)n. and G.S. 96-8(6)g. or domestic service as provided in G.S. 96-8(5)o. and G.S. 96-8(6)h., or (2) are services performed by an employee of this State or of a local governmental unit, as provided in G.S. 96-8(5)p. and G.S. 96-8(6)i. or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in G.S. 96-8(5)r. and G.S. 96-8(6)j.; except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services."

**Sec. 37.** G.S. 96-9, as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended as follows:

(a) G.S. 96-9(a)(1) is amended by deleting after the comma following the word "hereof" in line 1 the following phrase: "on and after January 1, 1936,".

(b) G.S. 96-9(a)(1) is amended by placing a period after the word "employ" on line 8 and deleting the rest of the sentence.

(c) G.S. 96-9(a)(5) is amended by deleting the entire subdivision and substituting the following:

"Prior to January 1, 1978, the term 'wages' shall not include for the purposes of this section any remuneration in excess of four thousand two hundred dollars (\$4,200) paid to any individual in a single calendar year by an employer with respect to employment.

Prior to January 1, 1978, for purposes of this section, the term 'wages' shall not include any remuneration paid to any employee in this State in excess of four thousand two hundred dollars (\$4,200) paid to an individual by a single employer if the employer of that individual made contributions in another state or states upon the wages paid to such individual during the applicable calendar year, because of work performed in another state or states.

Prior to January 1, 1978, any successor employer as defined in G.S. 96-8(5)b for the purposes of this section shall pay no contributions on that part of remuneration earned by any individual in the employ of the successor employer which, when added to the remuneration previously paid by the predecessor employer exceeded the sum of four thousand two hundred dollars (\$4,200) in a single calendar year, provided 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 and, provided further, that the predecessor employer has paid contributions on the wages paid to such individual while in his employ during the year of acquisition and the account of the predecessor is transferred to the successor in accordance with G.S. 96-9(c)(4)a.

Beginning January 1, 1978, and thereafter, the taxable wage base of any employee whose wages are subject to taxation, whether totally or partially, by the State of North Carolina under any provision of this Chapter shall be the federally required tax base."

**Sec. 38.** G.S. 96-9(a)(4), as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended as follows:

By deleting the present subsection and substituting the following:

"Political subdivisions of this State may finance benefits paid to employees either by coming under the experience rating program provided in G.S. 96-9(b) or by coming into the program on a reimbursement basis in accordance with the provisions and conditions of G.S. 96-9(d). Any election made shall be binding upon the political subdivision so electing for a period of four years."

**Sec. 39.** G.S. 96-9, as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended as follows:

- a. G.S. 96-9(b)(3) is amended by deleting paragraphs a., b., and c.
- b. G.S. 96-9(b)(3)d. is amended by deleting the present Experience Rating Formula table and substituting the following schedule:

#### EXPERIENCE RATING FORMULA

When The Credit Reserve Ratio Is

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.8%	0.8%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5
0.8%	1.0	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3
1.0	1.2	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1
1.2	1.4	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9
1.4	1.6	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7
1.6	1.8	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5
1.8	2.0	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3
2.0	2.2	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1
2.2	2.4	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9
2.4	2.6	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7
2.6	2.8	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5
2.8	3.0	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4
3.0	3.2	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3
3.2	3.4	1.5	1.3	1.1	0.9	0.7	0.5	0.3	0.4	0.2
3.4	3.6	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1
3.6	3.8	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1
3.8	4.0	0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1	0.1
4.0	4.2	0.7	0.5	0.4	0.3	0.2	0.1	0.1	0.1	0.1
4.2	4.4	0.5	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1
4.4	4.6	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1

4.6	4.8	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
4.8	5.0	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
5.0 and in excess thereof		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1

c. G.S. 96-9(b)(3)d. is further amended by adding a new paragraph at the end of the present subsection reading:

The Experience Rating Formula table in force in any particular year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding.

d. G.S. 96-9(b)(3)e. is amended by deleting the last paragraph in sub-subdivision e. and by deleting the present Rate Schedule for Overdrawn Accounts Beginning with the Calendar Year 1966 and by substituting the following Rate Schedule for Overdrawn Accounts Beginning with the Calendar Year 1978:

**RATE SCHEDULE FOR OVERDRAWN ACCOUNTS BEGINNING  
WITH THE CALENDAR YEAR 1978**

When The Debit Ratio Is:

As Much As	But Less Than	Assigned Rate
0.0%	0.3%	2.9%
0.3	0.6	3.1
0.6	0.9	3.3
0.9	1.2	3.5
1.2	1.5	3.7
1.5	1.8	3.9
1.8	2.1	4.1
2.1	2.4	4.3
2.4	2.7	4.5
2.7	3.0	4.7
3.0	3.3	4.9
3.3	3.6	5.1
3.6	3.9	5.3
3.9	4.2	5.5
4.2 and over		5.7

e. G.S. 96-9(b)(3)e. is further amended by adding a new paragraph at the end of the subsection as follows:

The Rate Schedule for Overdrawn Accounts Beginning with the Calendar Year 1966 in force in any particular calendar year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding.

f. G.S. 96-9(b)(3) is amended by relettering paragraphs "d" through "h", as amended herein, to "a" through "e" respectively.

**Sec. 40.** G.S. 96-9(c)(1), as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by deleting the first sentence and substituting the following:

"Except as provided in subsection (d) hereof, the Commission shall maintain a separate account for each employer and shall credit his account with all voluntary contributions made by him and all other contributions which he has paid or is paid on his own behalf, provided that any voluntary contribution made by an employer under the provisions of G.S. 96-9(b)(3)c(d), and credited to his account, shall be credited to such account in an amount equal to eighty percent (80%) of the amount of such voluntary contribution."

**Sec. 41.** G.S. 96-9(c)(2)a., as it appears in the 1975 Replacement Volume 2C of the General Statutes, is deleted and the following substituted:

"a. Benefits paid shall be charged against the account of each base period employer in the proportion that the base period wages paid to

an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period, except as hereinafter provided in paragraphs b., c., and d. of this subdivision, G.S. 96-9(d)(2)c, and G.S. 96-12(e)G. Benefits paid shall be charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired."

**Sec. 42.** G.S. 96-9(c)(2)b., as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by adding the following paragraph:

"No benefit charges shall be made to the account of any employer who has furnished part-time work to an individual who, because of the loss of employment with one or more other employers becomes eligible for partial benefits while still being furnished part-time work by such employer on substantially the same basis and substantially the same amount as had been made available to such work during his base period whether the employments were simultaneous or successive."

G.S. 96-9(c)(2)b. is further amended by deleting the word "the" at the beginning of line 10 in that sub-subdivision and substituting the word "any".

**Sec. 43.** G.S. 96-9(c)(2), as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by adding a new paragraph e. at the end thereof to read as follows:

- "e. 1. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be charged to the experience rating account of any employer.
- 2. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service."

**Sec. 44.** G.S. 96-9(c)(4)a., as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by deleting the last sentence of the paragraph.

**Sec. 45.** G.S. 96-9(c)(4)b., as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by adding after the word "reduction" in the second paragraph of this subsection the following:

", reacquires the account he transferred or acquires the experience rating account of another employer,".

**Sec. 46.** G.S. 96-9, as it appears in the 1975 Replacement Volume 2C of the North Carolina General Statutes, is amended as follows:

(a) G.S. 96-9(d)(2)a. is amended by deleting on line 8 the words "on or after July 1, 1972" and substituting the following:

"until January 1, 1978. On and after that date advance payments shall be effective with respect to the federally required wage base."

(b) G.S. 96-9(d)(2)a. is amended further by adding two additional paragraphs to that subsection as follows:

"Beginning January 1, 1978, any employer making quarterly reports of employment to the Commission and if such employer is a newly electing reimbursement employer he shall pay contributions of one percent (1%) of taxable wages entered on such reports.

Any employer paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports."

**Sec. 47.** G.S. 96-9(d)(2)d., as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is hereby amended by adding the following paragraph at the end of the present subsection:

"Beginning January 1, 1978, each employer paying by reimbursement shall have his account computed on computation date (August 1) and if there is a deficit shall be billed for an amount necessary to bring his account to one percent (1%) of his taxable payroll. Any amount of his account in excess of that required to equal one percent (1%) of his payroll shall be refunded. Amounts due from any employer to bring his account to a one percent (1%) balance shall be billed as soon as practical and payment will be due within 25 days from the date of mailing of the statement of amount due."

**Sec. 48.** G.S. 969(d), as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by adding a new subdivision (3) at the end thereof to read as follows:

- "(3) a. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be charged to a nonprofit organization which makes payments to the State Unemployment Insurance Fund in lieu of contributions.
- b. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service."

**Sec. 49.** G.S. 96-9, as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended by adding a new subsection (f) thereto to read as follows:

- "(f) (1) On and after January 1, 1978, all benefits charged to a State or local governmental employing unit shall be paid to the Commission within 25 days from the date a list of benefit charges is mailed to the State or local governmental employing agency and the appropriate account(s) shall be credited with such payment(s).
- (2) In lieu of paying for benefits by reimbursement as provided in subdivision (1) hereof, any State or local governmental employing unit may elect pursuant to rules and regulations established by the Commission to pay contributions on an experience rating basis as provided in G.S. 96-9(a), (b), and (c).
- (3) State or local governmental employing units paying for benefits as provided in subdivision (1) herein may establish pool accounts; provided, that such pool accounts are established and maintained according to the Rules and Regulations of the Commission.
- (4) Any governmental entity paying by reimbursement shall not have any benefits paid against its account non-charged or forgiven."

**Sec. 50.** G.S. 96-10, as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended as follows:

- (a) Subsection (a) is amended (1) after the period in line 5 by inserting the following:

"An additional penalty in the amount of ten percent (10%) of the taxes due shall be added, but said penalty shall in no event be less than five dollars (\$5.00). Penalties and..." and by (2) reducing the first letter of the present word "Interest" to the lower case.

(b) Subsection (c) is amended by adding a second subparagraph as follows:

"A receiver of any covered employer placed into an operating receivership pursuant to an order of any court of this State shall pay to the Commission any contributions, penalties or interest then due out of monies or assets on hand or coming into his possession before any such monies or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership."

(c) Subsection (g) is amended by adding a second paragraph to read as follows:

"There shall be added to the amount required to be shown as tax in the reports a penalty of five percent (5%) of the amount of such tax if the failure is not for more than one month with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) of the aggregate or five dollars (\$5.00), whichever is greater.

(d) A new subsection (j) is added to read as follows:

"(j) The Commission shall have the power to reduce or waive any penalty provided in G.S. 96-10(a) or G.S. 96-10(g). The reason for any such reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies."

**Sec. 51.** G.S. 96-11(c)(3)a., as it appears in the 1975 Replacement Volume 2C of the General Statutes, is amended as follows:

By adding after the comma following the date 1972 in line 1 the phrase "through December 31, 1977".

**Sec. 52.** G.S. 96-12, as it appears in the 1975 Replacement Volume 2C of the North Carolina General Statutes, and as amended in the 1975 Supplement to Volume 2C of the General Statutes, is amended as follows:

(a) G.S. 96-12(b)(1)a. is deleted in its entirety.

(b) G.S. 96-12(b)(1)b. is amended by redesignating it G.S. 96-12 (b)(1)a.

(c) G.S. 96-12(b)(1)c. is amended by redesignating it G.S. 96-12(b)(1)b. and by adding at the end of the present sub-subdivision the following: "Provided, for all benefit years beginning after December 31, 1977, the allowable excess shall be ten percent (10%) of the average weekly wage in the high quarter of his base period."

(d) G.S. 96-12(e)A.(2) is amended by deleting the following sentence beginning on line 6:

"Subsequent to December 31, 1976, the indicator rate shall be four and one-half percent (4.5%)."

and adding in its stead:

"On and after January 1, 1977, there is a national 'on' indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths per centum (4.5%). The rate of insured unemployment, for purposes of this paragraph, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period."

(e) G.S. 96-12(e)A.(3) is amended by deleting the last sentence beginning on line 6 which reads:

"Subsequent to December 31, 1976, the indicator rate shall be four and one-half percent (4.5%)."

and adding in its stead:

"On and after January 1, 1977, there is a national 'off' indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured

unemployment (seasonally adjusted) for all states was less than four and five-tenths per centum (4.5%). The rate of insured unemployment, for purposes of this paragraph, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period."

(f) G.S. 96-12(e)A.(4) is amended as follows:

(1) In line 10 by deleting subparagraph designation "b." therefrom and by replacing the period at the end thereof with a comma and adding the word "or" after the comma.

(2) By adding a new subparagraph b. thereto to read as follows:

"b. equaled or exceeded five percent (5%)."

(g) G.S. 96-12(e)A.(5) is amended in line 10 as follows:

(1) By deleting the subparagraph designation "b." therefrom and by replacing the period at the end thereof with a comma and by adding the word "or" after the comma.

(2) By adding a new subparagraph b. thereto to read as follows:

"b. was less than five percent (5%)."

(h) G.S. 96-12(e)G. is amended as follows:

(1) In line 1 by replacing all of the language preceding the comma therein with the following language: "Prior to January 1, 1978,".

(2) By adding a second paragraph to read as follows:

"On and after January 1, 1978, the federal portion of any extended benefit shall not be charged to the account of any base period employer who pays contributions as required by this Chapter. All State portions of the extended benefits paid shall be charged to the account of governmental entities or other employers not liable for FUTA taxes who are the base period employers."

(i) G.S. 96-12 is amended by adding a subsection (f) to read as follows:

"(f) Any amount payable under any provision of this Chapter when applicable is subject to the retirement reduction required by G.S. 96-14(9)."

**Sec. 53.** G.S. 96-13, as it appears in the 1975 Supplement to Volume 2C of the General Statutes of North Carolina, is amended as follows:

(a) On line 1 by inserting between the dash and the word "An" the subsection designation (a).

(b) By redesignating present subdivisions (4) and (5) as subsections (b) and (c).

(c) By redesignating sub-subdivisions a. and b. of present subdivision (4) as (1) and (2) respectively.

(d) Subdivision (3) is amended by deleting in line 9 the words "that effective January 1, 1949."

(e) G.S. 96-13 is amended by adding a new subsection (d) to read as follows:

"(d) Benefit entitlement of governmental entities that become subject to Employment Security Commission law effective January 1, 1978, will be administered in the same manner and under the same conditions of the laws of this Chapter as are applicable to individuals whose benefit rights are based on other service subject to this Chapter."

(f) G.S. 96-13 is amended by adding a new subsection (e) to read as follows:

"(e) Benefits shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the latter of such seasons (or similar periods)."

(g) G.S. 96-13 is amended by adding a new subsection (f) to read as follows:

"(f) Benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence."

**Sec. 54.** G.S. 96-15, as it appears in the 1975 Replacement Volume 2C of the North Carolina General Statutes, is amended as follows:

(a) G.S. 96-15(b)(1) is amended by removing the words "a deputy" appearing in line 16 and substituting the words "an adjudicator".

(b) G.S. 96-15(b)(2) is amended by striking the entire subsection and substituting the following:

(2) Hearings before adjudicator. When a protest is made by the claimant to his initial determination or a question or issue is presented or raised as to the eligibility of a claimant for benefits under G.S. 96-13 herein, or whether any disqualification shall be imposed by virtue of G.S. 96-14 of this Chapter, or benefits denied, or his account adjusted pursuant to G.S. 96-18 of this Chapter, the claim shall be referred to an adjudicator who shall afford the parties an opportunity to present their positions at an informal conference. The adjudicator can consider any matter, material or statement deemed to be pertinent to the issues, including telephone inquiries when desirable and, after consideration, shall render a conclusion as to the benefit entitlements of the claimant involved. The adjudicator shall notify the claimant and any other interested party of the conclusion reached. Unless the claimant or any other interested party within 10 days after notification of the conclusion of the adjudicator, whether the conclusion be delivered manually or mailed, files an appeal to such conclusion, the conclusion shall be final and benefits paid or denied in accordance therewith.

The Commission shall be deemed an interested party.

The Commission may remove unto itself or transfer it to an appeals referee the proceedings of any claim pending before an adjudicator.

On out-of-State claims filed by a claimant in another state against this State or in cases involving the failure of the claimant to meet any procedural requirement pertaining to the filing of the claimant or denial or adjustment of the account under G.S. 96-18, the adjudicator will not be required to give notice of the time of consideration."

(c) Subsection (c) is deleted and the following substituted:

"Unless an appeal from the adjudicator is withdrawn, an appeals referee shall set a hearing in which the parties are given reasonable opportunity to be heard. The appeals referee may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the Commission unless within 10 days after the date of notification of, or mailing of the decision, further appeal is initiated. Should the appeals referee uphold the conclusion of the adjudicator, any benefits paid as the result of that decision shall not be charged to any employer's account if that decision is finally reversed. Any reference to 'appeals deputy' or 'appeals tribunal' in this Chapter shall be deemed to mean 'appeals referee'."

(d) G.S. 96-15(d) is amended by deleting it in its entirety.

(e) G.S. 96-15(e) is amended by relettering to subsection (d) and by removing the present language and substituting the following:

"Review by the Commission. The Commission or deputy commissioner may on its own motion affirm, modify, or set aside any decision of an appeals referee on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Commission or deputy commissioner may deem proper. The Commission or deputy commissioner may remove to itself or transfer to another appeals referee the proceedings on any claim pending before an appeals referee. The Commission shall promptly notify the interested parties of its findings and the decision. In all Commission matters heard by a deputy commissioner, the decision of the deputy commissioner shall constitute the decision of the Commission; except, the Commission may remove unto itself, upon its own motion, any claim pending for rehearing and redetermination, provided such removal is done prior to the expiration of appeal period applicable to the decision of the deputy commissioner."

(f) Subsection (f) is renumbered as subsection (e) and is amended by deleting in line 6 the following sentence:

"A full and complete record shall be kept of all proceedings in connection with a disputed claim."

(g) Subsection (h) is amended by adding after the "period" following the word "residence" in line 5 the following:

"Unless the claimant objects, after being afforded reasonable opportunity to do so, to the Superior Court of Wake County."

(h) Subsections (g), (h), (j) and (k) of the present section are relettered (f), (g), (i) and (j), respectively.

**Sec. 55.** G.S. 96-18, as it appears in the 1975 Replacement Volume 2C of the General Statutes of North Carolina, is amended by adding a new paragraph (g) to read as follows:

(1) Any person who, by reason of his fraud, has received any sum as benefits under this Chapter to which he was not entitled shall be liable to repay such sum to the Commission for and on behalf of the trust fund, or, in the discretion of the Commission, to have such sum deducted from future benefits payable to him under this Chapter, provided a finding of the existence of such fraud has been made by a decision pursuant to this Chapter within two years from the commission of such fraud.

(2) If any person, other than by reason of his fraud, has received any sum as benefits under this Chapter to which he has been found not entitled, he shall be liable to repay such sum to the Commission for and on behalf of the trust fund or, in the discretion of the Commission, shall have such sum deducted from any future benefits payable to him under this Chapter. No such recovery or recoupment of such sum may be effected after 10 years from the last day of the year in which the overpayment occurred."

**Sec. 56.** G.S. 96-19, as it appears in the 1975 Replacement Volume 2C of the North Carolina General Statutes, is amended as follows:

(a) G.S. 96-19 is amended by designating the present section as subsection (a) and adding a new subsection (b) to read as follows:

(b) The Employment Security Commission may, upon receiving notification from the U.S. Department of Labor that any provision of this Chapter is out of conformity with the requirements of the federal law or of the U. S. Department of Labor, suspend the enforcement of the contested section or provision until the North Carolina Legislature next has an

opportunity to make changes in the North Carolina law. The Employment Security Commission shall, in order to implement the above suspension: (1) notify the Governor's office and provide that office with a copy of the determination or notification of the U.S. Department of Labor; (2) advise the Governor's office as to whether the contested portion or provision of the law would, if not enforced, so seriously hamper the operations of the agency as to make it advisable that a special session of the legislature be called; (3) take all reasonable steps available to obtain a reprieve from the implementation of any federal conformity failure sanctions until the State legislature has been afforded an opportunity to consider the existing conflict."

**Sec. 57.** This act shall become effective on January 1, 1978, except that Section 9, Section 41, subsections (f) and (g) of Section 52, and subsections (e), (f), (g), and (h) of Section 54 of this act shall become effective upon ratification.

**Sec. 58.** If U.S. Public Law 94-566 or the federal acts it amends should be adjudged unconstitutional or invalid in its or their application or stayed pendente lite as to State or local employees by a court of competent jurisdiction, then the coverage of those employees under this act is automatically stayed or repealed to the extent of the adjudged inapplicability. The repeal shall be effective from the date of final disposition upon appeal or from the date of expiration of the right of appeal and shall apply to relevant matters pending at that time. If Public Law 94-566 or those provisions thereof relating to coverage of State and local employees should at any time be repealed by the U.S. Congress, then the provisions of this act relating to coverage of State and local employees shall be automatically repealed.

In the General Assembly read three times and ratified, this the 24th day of June, 1977.