

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**SESSION LAW 2011-401  
SENATE BILL 532**

AN ACT TO REFORM THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA BY CREATING THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE DEPARTMENT OF COMMERCE, TRANSFERRING THE FUNCTIONS OF THE EMPLOYMENT SECURITY COMMISSION TO THAT DIVISION, MAKING THE DIVISION SUBJECT TO RULE MAKING UNDER ARTICLE 2A OF CHAPTER 150B OF THE GENERAL STATUTES, AND BY MAKING OTHER MODIFICATIONS AND CONFORMING CHANGES TO ALIGN THE EMPLOYMENT SECURITY FUNCTIONS OF STATE GOVERNMENT UNDER THE DIRECT LEADERSHIP OF THE SECRETARY OF COMMERCE.

The General Assembly of North Carolina enacts:

**PART I. TRANSFER; GENERAL PROVISIONS; RULE MAKING**

**SECTION 1.1.** Transfers of agency, powers, duties. – The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Employment Security Commission are transferred to the Department of Commerce with all of the elements of a Type I transfer as defined by G.S. 143A-6.

**SECTION 1.2.** Continuation of duties. – Any previous assignment of duties of a quasi-legislative and quasi-judicial nature by the Governor or General Assembly shall have continued validity with the transfer under this act. Except as otherwise specifically provided in this act, each enumerated commission, board, office, bureau, or other subunit of State government transferred to the Secretary of Commerce and the Department of Commerce, Division of Employment Security, is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the former entities are referred to by law, contract, or other document in their former name, the Secretary of Commerce and the Department of Commerce, Division of Employment Security, are charged with exercising the functions of the former named entity.

**SECTION 1.3.** No action or proceeding pending on November 1, 2011, brought by or against the Employment Security Commission shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Department of Commerce, Division of Employment Security. In these actions and proceedings, the Secretary of Commerce or the Department of Commerce shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the Employment Safety and Security Commission, or by the commissioners or directors thereof, pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on the date this act becomes effective, may be conducted and completed by the Employment Safety and Security Commission in the same manner and under the same terms and conditions and with the same



effect as if conducted and completed by the original program, office, or commissioners, or directors thereof.

**SECTION 1.4.** G.S. 143B-431(a)(1) and (a)(2) read as rewritten:

**"§ 143B-431. Department of Commerce – functions.**

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

- (1) All of the executive functions of the State in relation to economic development and employment security, including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the administration of unemployment insurance, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;
- (2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:
  - a. The State Board of Alcoholic Control,
  - b. The North Carolina Utilities Commission,
  - e. ~~The Employment Security Commission,~~
  - d. The North Carolina Industrial Commission,
  - e. State Banking Commission and the Commissioner of Banks,
  - f. Savings Institutions Division,
  - g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
  - h. Credit Union Commission,
  - i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
  - j. The North Carolina Mutual Burial Association Commission,
  - k. The North Carolina Rural Electrification Authority,
  - l. The North Carolina State Ports Authority,all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

...."

**SECTION 1.5.** G.S. 143B-433 reads as rewritten:

**"§ 143B-433. Department of Commerce – organization.**

The Department of Commerce shall be organized to include:

- (1) The following agencies:
  - a. The North Carolina Alcoholic Beverage Control Commission.
  - b. The North Carolina Utilities Commission.
  - e. ~~The Employment Security Commission.~~
  - d. The North Carolina Industrial Commission.
  - e. State Banking Commission.
  - f. Savings Institutions Division.
  - g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
  - h. Credit Union Commission.
  - i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17, 2004.
  - j. The North Carolina Mutual Burial Association Commission.
  - k. North Carolina Cemetery Commission.
  - l. The North Carolina Rural Electrification Authority.
  - m. Repealed by Session Laws 1985, c. 757, s. 179(d).

- n. North Carolina Science and Technology Research Center.
  - o. The North Carolina State Ports Authority.
  - p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2, 2010.
  - q. Economic Development Board.
  - r. Labor Force Development Council.
  - s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective September 30, 2000.
  - u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
  - v. Repealed by Session Laws 1993, c. 321, s. 313b.
- (2) Those agencies which are transferred to the Department of Commerce including the:
- a. Community Assistance Division.
  - b. Community Development Council.
  - c. Employment and Training Division.
  - d. Job Training Coordinating Council.
- (3) The Division of Employment Security.
- (4) Such divisions as may be established pursuant to Article 1 of this Chapter."

**SECTION 1.6.** G.S. 143B-343(c) reads as rewritten:

"(c) Advice and Staff. – The Secretaries of Administration, State, and Transportation, the Commissioners of Agriculture and Labor, and the State Treasurer, or their designees, shall advise the Board on economic development activities within the responsibility of their respective departments. Clerical and professional staff support to the Economic Development Board shall be provided by an Interagency Economic Development Group composed of representatives of the following State agencies:

- (1) The Department of Administration.
- (2) The Department of Agriculture and Consumer Services.
- (3) The Division of Employment Security ~~Commission~~.Security.
- (4) The Department of Labor.
- (5) The Department of Transportation.

The Department of Commerce shall have the responsibility for coordinating the activities and efforts of the Interagency Economic Development Group."

**SECTION 1.7.** G.S. 143B-438.10(b)(1) reads as rewritten:

"(b) Membership; Terms. – The Commission on Workforce Development shall consist of 38 members appointed as follows:

- (1) By virtue of their offices, the following department and agency heads or their respective designees shall serve on the Commission: the Secretary of the Department of Health and Human Services, the ~~Chair~~ Assistant Secretary of Commerce in charge of the Division of Employment Security ~~Commission~~, ~~Security~~, the Superintendent of Public Instruction, the President of the Community Colleges System Office, the Commissioner of the Department of Labor, and the Secretary of the Department of Commerce."

**SECTION 1.8.** G.S. 143B-438.16 reads as rewritten:

**"§ 143B-438.16. Trade Jobs for Success initiative established; funds; program components and guidelines.**

(a) There is established within the Department of Commerce the Trade Jobs for Success (TJS) initiative. The Department of Commerce shall lead the TJS initiative in cooperation with the ~~Employment Security Commission~~ and the Community Colleges System Office.

(b) There is created in the Department of Commerce a special, nonreverting fund called the Trade Jobs for Success Fund (Fund). The Fund shall be used to implement the TJS initiative. The Department of Commerce shall develop guidelines for administration of the TJS initiative and the Fund. An advisory council shall assist the Secretary of Commerce in the administration of the Fund. The members of the advisory council shall include:

- (1) The ~~Chairman~~ Assistant Secretary of Commerce in charge of the Division of Employment Security Commission Security or that officer's designee.
- (2) The President of the Community Colleges System or that officer's designee.
- (3) The State Auditor or that officer's designee.
- (4) A representative of a statewide association to further the interests of business and industry in North Carolina designated by the Secretary of Commerce.

(c) At a minimum, the Trade Jobs for Success initiative shall include the following programmatic components:

- (1) Displaced workers participating in the TJS initiative shall receive (i) on-the-job training to learn new job skills and (ii) educational assistance or remedial education specifically designed to help displaced workers qualify for new jobs.
- (2) Displaced workers participating in the TJS initiative shall not lose their eligibility for unemployment insurance benefits while they are in the program and may receive wage supplements, as appropriate.
- (3) In-State relocation assistance, in appropriate instances, where participating individuals must relocate to work for participating employers.
- (4) Mentoring, both on and off the job, shall be provided to participants in a dignified manner through telephone assistance and other appropriate means.
- (5) Financial assistance and other incentives may be provided to participating employers who provide jobs to participating displaced workers to help defray the costs of providing the on-the-job training opportunities.
- (6) Work provided by participating employers as part of the TJS initiative must be full-time employment. Wages paid shall not be less than the hourly entry-level wage normally paid by the employer.
- (7) Staff of the Division of the Employment Security Commission Security, in conjunction with other appropriate staff of the Department of Commerce, shall match participating displaced workers to the most suitable employer.
- (8) Local Employment Security ~~Commission~~-offices operated by the Division of Employment Security and community colleges shall enter into partnership agreements with local chambers of commerce, and other appropriate organizations, that would encourage employer participation in the TJS initiative.
- (9) Tracking of participating individuals and businesses by the Department of Commerce ~~and the Employment Security Commission~~ to assure program integrity and effectiveness and the compilation of data to generate the reports necessary to evaluate the success of the TJS initiative.
- (10) Coordination and integration of existing programs in the Department of Commerce, the ~~Employment Security Commission~~, Division of Employment Security, and the North Carolina Community College System in a manner that maximizes the flexibility of these agencies to effectively assist participating individuals and businesses."

**SECTION 1.9.** G.S. 143B-438.17(c) reads as rewritten:

"(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the ~~Employment Security Commission~~ Division of Employment Security and the Community Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs

for Success initiative. The annual report shall include a detailed explanation of outcomes and future planning for the TJS initiative and legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the annual report shall be provided to the Governor, to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly."

**SECTION 1.10.(a)** G.S. 150B-1(c) reads as rewritten:

**"§ 150B-1. Policy and scope.**

...

- (c) Full Exemptions. – This Chapter applies to every agency except:
- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
  - (2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
  - (3) The Utilities Commission.
  - (4) The Industrial Commission.
  - ~~(5) The Employment Security Commission.~~
  - (6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
  - (7) The North Carolina State Lottery.
  - (8) (Expires June 30, 2012) Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

**SECTION 1.10.(b)** G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

- (18) The Department of Commerce for hearings and appeals authorized under Chapter 96 of the General Statutes."

**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 by December 31, 2012, shall expire.

**PART II. SUBSTANTIVE AMENDMENTS AND CONFORMING CHANGES TO THE EMPLOYMENT SECURITY LAWS**

**SECTION 2.1.** G.S. 96-1 reads as rewritten:

"Article 1.

"Employment Security Commission-Division of Employment Security.

**"§ 96-1. Title.**

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

SECTION 2.2. G.S. 96-3 reads as rewritten:

**"§ 96-3. Employment Security Commission.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.

~~(a) Organization. — There is hereby created a commission to be known as the Employment Security Commission of North Carolina. The Commission shall consist of seven members to be appointed by the Governor on or before July 1, 1941. The Governor shall have the power to designate the member of said Commission who shall act as the chairman thereof. The chairman of the Commission shall not engage in any other business, vocation or employment. Three members of the Commission shall be appointed by the Governor to serve for a term of two years. Three members shall be appointed to serve for a term of four years, and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four years each, thereafter, and the member of said Commission designated by the Governor as chairman shall serve at the pleasure of the Governor. Any member appointed to fill a vacancy occurring in any of the appointments made by the Governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Governor may at any time after notice and hearing, remove any Commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.~~

~~(b) Divisions. — The Commission shall establish two coordinate divisions: the North Carolina State Employment Service Division, created pursuant to G.S. 96-20, and the Unemployment Insurance Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel and duties, except insofar as the Commission may find that such separation is impracticable. 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.~~

~~(c) Salaries. — The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be the same as the salary fixed by the General Assembly in the Current Operations Appropriations Act for the Secretary of Commerce, and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund.~~

~~(d) Quorum. — The chairman or his designee and three members of the Commission shall constitute a quorum."~~

SECTION 2.3. G.S. 96-4 reads as rewritten:

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

(a) Duties and Powers of ~~Commission.~~the Secretary and Assistant Secretary. — It shall be the duty of the ~~Commission~~Secretary of the Department of Commerce to administer this Chapter.~~Chapter.~~ The Secretary shall appoint an Assistant Secretary to assist in the implementation of the Employment Security Laws and the oversight of the Division of Employment Security.

(b) Board of Review. – The Governor shall appoint a three-person Board of Review to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Employment Security Section and the Employment Insurance Section. The Board of Review shall be comprised of one member representing employers, one member representing employees, and one member representing the general public. Members of the Board of Review are subject to confirmation by the General Assembly and shall serve four-year terms. The member appointed to represent the general public shall serve as chair of the Board of Review and shall be a licensed attorney. The annual salaries of the Board of Review shall be set by the General Assembly in the current Operations Appropriations Act. ~~The Commission shall meet at least once in each 60 days and may hold special meetings at any time at the call of the chairman or any three members of the Commission, and the Commission shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable in the administration of this Chapter. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Chapter, which the Commission shall prescribe. The Commission~~

(c) Procedures. – The Secretary of the Department of Commerce shall determine ~~its own~~ the organization and methods of procedure of the Division, in accordance with the provisions of this Chapter, and shall have an official seal which shall be judicially noticed. ~~The chairman of said Commission shall, Assistant Secretary shall,~~ except as otherwise provided by the Commission, ~~Secretary,~~ be vested with all authority of the Commission, ~~Secretary under this Chapter,~~ including the authority to conduct hearings and make decisions and determinations, ~~when the Commission is not in session and shall execute all orders, rules and regulations established by said Commission.~~ the Secretary. Not later than November 20 preceding the meeting of the General Assembly, the ~~Commission Secretary~~ shall submit to the Governor a report covering the administration and operation of this Chapter during the preceding biennium, and shall make such recommendation for amendments to this Chapter as the ~~Commission Secretary~~ deems proper. ~~Such~~ The report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the ~~Commission Secretary~~ in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the ~~Commission Secretary~~ believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, ~~it~~ the Secretary shall promptly so inform the Governor and the legislature, and make recommendations with respect thereto.

~~(b)(d) Regulations and General and Special Rules.~~ — Rule Making. – Rules adopted to implement the Employment Security Laws in accordance with this Chapter shall be made pursuant to Article 2A of Chapter 150B of the General Statutes, the Administrative Procedures Act. ~~General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given by mail to the last known address in cases of special rules, or by publication as herein provided, and by one publication as herein provided as to general rules. The Commission shall not take final action on a general or special rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management has prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Before the adoption, amendment, or repeal of any permanent regulation, the Commission shall publish notice of the public hearing and offer any person an opportunity to present data, opinions, and arguments.~~

~~The notice shall be published in one or more newspapers of general circulation in this State at least 10 days before the public hearing and at least 20 days prior to the proposed effective date of the proposed permanent regulation. The published notice of public hearing shall include the time and place of the public hearing; a statement of the manner in which data, opinions, and arguments may be submitted to or before the Commission; a statement of the terms or substance of the proposed regulation; a statement of whether a fiscal note has been or will be prepared for the proposed regulation; and the proposed effective date of the regulation. Any permanent regulation adopted after following the above procedure shall become effective on its effective date and after it is published in the manner provided for in subsection (c) as well as such additional publication as the Commission deems appropriate. Additionally, the Commission shall provide notice of adoption by mail to the last known addresses of all persons who submitted data, opinions, or arguments to the Commission with respect to the regulation. Temporary regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission but shall remain in force for no longer than 120 days.~~

~~(e)(e) Publication.~~ – ~~The Commission-Division shall cause to be printed for distribution to the public the text of this Chapter, the Commission's regulations and general-Division's rules, and any other material the Commission-Division deems relevant and suitable, and shall furnish the same to any person upon application therefor. All publications printed shall comply with the requirements of G.S. 143-170.1.~~

~~(d)(f) Personnel.~~ – ~~Subject to other provisions of this Chapter, the Commission-Assistant Secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. It the Division's duties under this Chapter. The Assistant Secretary shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments not to exceed six months in duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such examinations. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The Commission-Secretary of Commerce may delegate to any such person so appointed such power and authority as it the Secretary deems reasonable and proper for the effective administration of this Chapter, and may, in its-his or her discretion, bond any person handling moneys or signing checks hereunder.~~

~~(e)(g) Advisory Councils.~~ – ~~The Governor shall appoint a State Advisory Council composed of men and women representing employers, employees, and the general public, in equal numbers. The Chairman of the Commission shall be a member of the State Advisory Council and shall serve as its chairman. There shall be 15 members of the Council (other than its chairman) who shall each be appointed for a term of four years. The State Advisory Council shall be composed of the Assistant Secretary and 15 persons representing employers, employees, and the general public, to be appointed as follows:~~

- ~~(1) Five members appointed by the Governor.~~
- ~~(2) Five members appointed by the President Pro Tempore of the Senate.~~
- ~~(3) Five members appointed by the Speaker of the House of Representatives.~~

~~Each member shall be appointed for a term of four years. Vacancies on the State Advisory Council shall be filled by the appointing authority. The Assistant Secretary shall serve as chair. A quorum of the State Advisory Council shall consist of the chairman, or such appointed member as he may designate, plus one half of the total appointed members. The function of the Council shall be to aid the Commission-Division in formulating policies and discussing problems related to the administration of this Chapter. Each member of the State Advisory Council attending meetings of the Council shall be paid the same amount per diem for his or her services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services, including necessary time spent in~~



traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office, and his actual mileage and subsistence at the same rate allowed to State officials.

~~(f)~~(h) Employment Stabilization. – ~~The Commission,~~ Secretary of Commerce, in consultation with the Assistant Secretary and with the advice and aid of its the advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

~~(g)~~(i) Records and Reports. –

(1) Each employing unit shall keep true and accurate employment records, containing such information as the ~~Commission~~ Division may prescribe. ~~Such~~ The records shall be open to inspection and be subject to being copied by the ~~Commission~~ Division or its authorized representatives at any reasonable time and as often as may be necessary. Any employing unit doing business in North Carolina shall make available in this State to the ~~Commission,~~ Division, such information with respect to persons, firms, or other employing units performing services for it which the ~~Commission~~ Secretary deems necessary in connection with the administration of this Chapter. The ~~Commission~~ Division may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the ~~Commission~~ Secretary deems necessary for the effective administration of this Chapter.

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

(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. Appeals from the decisions of the hearing officers or appeals referees shall be heard by the Board of Review.

~~(h)~~(k) Oaths and Witnesses. – In the discharge of the duties imposed by this Chapter, the ~~chairman~~ Assistant Secretary, the Chair of the Board of Review, and any duly authorized representative or member of the Commission ~~of the Division~~ shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel

the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Chapter. Upon a motion, the ~~chairman~~ Assistant Secretary, the Chair of the Board of Review, and any duly authorized representative ~~or member of the Commission of the Division~~ may quash a subpoena if, after a hearing, ~~the Commission finds any of the following:~~ any of the following findings are made:

- (1) The subpoena requires the production of evidence that does not relate to a matter in issue.
- (2) The subpoena fails to describe with sufficient particularity the evidence required to be produced.
- (3) The subpoena is subject to being quashed for any other reason sufficient in law.

~~(h1)~~(l) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subsection ~~(h)~~(k) of this section shall be heard at least ~~10~~20 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides.

~~(i)~~(m) Subpoenas. – In case of contumacy by, or refusal to obey a subpoena issued to any person by the ~~Commission or its Secretary, the Assistant Secretary, the Board of Review, or the Division's~~ authorized representative, any clerk of a superior court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the ~~Commission, Division,~~ or its duly authorized representatives, shall have jurisdiction to issue to such person an order requiring such person to appear before the ~~Commission, Division,~~ or its duly authorized representatives, there to produce evidence if so ordered, or there to give testimony touching upon the matter under investigation or in question; and any failure to obey such order of the said clerk of superior court may be punished by ~~the said clerk of superior court~~ any Superior Court judge as a contempt of said court. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, or other records in obedience to a subpoena of the ~~Commission, Division,~~ shall be punished by a fine of not more than fifty dollars ~~(\$50.00) or by imprisonment for not longer than 30 days.~~(\$50.00).

~~(j)~~(n) Protection against Self-Incrimination. – No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the ~~Commission~~ Division, Board of Review, or in obedience to the subpoena of the ~~Commission~~ Division, Board of Review, or any member thereof, or any duly authorized representative of the ~~Commission, Division,~~ or Board of Review in any cause or proceeding before the ~~Commission, Division,~~ on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

~~(k)~~(o) State-Federal Cooperation. – In the administration of this Chapter, the ~~Commission~~ Board of Review or Division shall cooperate, to the fullest extent consistent with the provisions of this Chapter, with the federal agency, official, or bureau fully authorized and empowered to administer the provisions of the Social Security Act approved August 14, 1935, as amended, shall make such reports, in such form and containing such information as such federal agency, official, or bureau may from time to time require, and shall comply with such provisions as such federal agency, official, or bureau may from time to time find necessary to assure the

correctness and verification of such reports; and shall comply with the regulations prescribed by such agency, official, or bureau governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this Chapter. The ~~Commission~~ Board of Review or Division shall further make its records available to the Railroad Retirement Board, created by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies thereof as the Board shall deem necessary for its purposes in accordance with the provisions of section 303 (c) of the Social Security Act as amended.

Upon request therefor, the ~~Commission~~ Division shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits, and such recipient's rights to further benefits under this Chapter.

The ~~Commission~~ Division is authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this Chapter as it deems necessary or appropriate to facilitate the administration of any employment security or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this State by the agency charged with the administration of such other employment security or public employment service law.

The ~~Commission~~ Division shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would, in its judgment, tend to effect complete or substantial federalization of State unemployment insurance funds or State employment security programs.

~~(p)~~ (p) Reciprocal Arrangements. –

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

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

1. In which any part of such individual's service is performed or
2. In which such individual has his residence or
3. In which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by the employing unit, approved by the agency charged with the administration of such state's employment security law, pursuant to which the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

b. Combining wage credits. – The ~~Commission~~ Division shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this Chapter with his wages and employment covered under one or more laws of the federal government and the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for (1) applying the base

period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and (2) avoiding the duplicate use of wages and employment by reason of such combining.

- c. The services of the ~~Commission-Division~~ as agent may be made available to other states in taking interstate claims for such states.
  - d. Contributions due under this Chapter with respect to wages for insured work shall for the purposes of G.S. 96-10 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the ~~Commission-Division~~ finds will be fair and reasonable as to all affected interests.
  - e. The services of the ~~Commission-Division~~ may be made available to such other agencies to assist in the enforcement and collection of judgments of such other agencies.
  - f. The services on vessels engaged in interstate or foreign commerce for a single employer, wherever performed, shall be deemed performed within this State or within such other state.
  - g. Benefits paid by agencies of other states may be reimbursed to such agencies in cases where services of the claimant were "employment" under this Chapter and contributions have been paid by the employer to this agency on remuneration paid for such services; provided the amount of such reimbursement shall not exceed the amount of benefits such claimant would have been entitled to receive under the provisions of this Chapter.
- (2) Reimbursements paid from the fund pursuant to subparagraphs b and c of subdivision (1) of this subsection shall be deemed to be benefits for the purpose of G.S. 96-6, 96-9, 96-12 and 96-12.01. The ~~Commission-Division~~ is authorized to make to other states or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision (1) of this subsection.
- (3) To the extent permissible under the laws and Constitution of the United States, the ~~Commission-Division~~ is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this Chapter and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the Employment Security Law of this State or under a similar law of such government.

~~(m)~~(q) The ~~Commission-Division~~ after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and subdivisions thereunder. The ~~Commission-Division~~ shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the ~~Commission-Division~~ by any employer. Hearings may be before the ~~Commission or a Deputy Commissioner Board of Review or the Division~~ and shall be held in the central office of the ~~Commission-Division~~ 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~~ Board of Review and a determination of the law applicable to that evidence. The ~~Commission~~ Division shall provide for the taking of evidence by a hearing officer ~~who shall be a member of the legal staff of the Commission~~ officer. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the ~~Commission~~ Division and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the ~~Commission~~ Board of Review or Division for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employing unit or employer either resides, maintains a place of business, or conducts business; however, the ~~Commission~~ Board of Review or Division may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the ~~Commission or a Deputy Commissioner~~ Assistant Secretary or the Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before ~~such a~~ party shall be allowed to appeal, ~~he~~ the party shall within 10 days after notice of such decision or determination, file with the ~~Commission~~ Board of Review exceptions to the decision or the ~~determination of the Commission~~ determination, which exceptions will state the grounds of objection to ~~such the~~ decision or determination. If any one of ~~such the~~ exceptions shall be overruled then ~~such the~~ party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the ~~Commission~~ Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the ~~Commission~~ Division upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the ~~Commission~~ Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10 days after the notice of appeal has been served, file with the ~~Commission~~ Board of Review exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the ~~Commission~~ Board of Review shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or, unless the appellant objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties. ~~If there be no exceptions to any facts as found by the Commission the facts so found shall be binding upon the court and it shall be heard by the judge at chambers at some place in the district, above mentioned, of which all parties shall have 10 days' notice.~~

~~(n)~~(r) The cause shall be entitled "State of North Carolina on Relationship of the ~~Employment Security Commission~~ Division of Employment Security, Department of Commerce, of North Carolina against (here insert name of appellant)," and if there are exceptions to any facts found by the ~~Commission~~ Board of Review, it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions except those described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are prescribed for the trial of other civil causes. By consent of all parties the appeal may be held and determined at chambers before any judge of a district in which the appellant either resides, maintains a place of business or conducts business, or said appeal may be heard before any judge holding court therein, or in any district in which the appellant either resides, maintains a place of business or conducts business. Either party may appeal to the appellate division from the judgment of the superior court under the same rules and regulations as are prescribed by

law for appeals, except that if an appeal shall be taken on behalf of the ~~Employment Security Commission of North Carolina~~ Department of Commerce, it shall not be required to give any undertaking or make any deposit to secure the cost of such appeal and such court may advance the cause on its docket so as to give the same a speedy hearing.

~~(e)~~(s) The decision or determination of the ~~Commission~~ Division when docketed in the office of the clerk of the superior court of any county and when properly indexed and cross-indexed shall have the same force and effect as a judgment rendered by the superior court, and if it shall be adjudged in the decision or determination of the ~~Commission~~ Division that any employer is indebted to the ~~Commission~~ Division for contributions, penalties and interest or either of the same, then said judgment shall constitute a lien upon any realty owned by said employer in the county only from the date of docketing of such decision or determination in the office of the clerk of the superior court and upon personalty owned by said employer in said county only from the date of levy on such personalty, and upon the execution thereon no homestead or personal property exemptions shall be allowed; provided, that nothing herein shall affect any rights accruing to the ~~Commission~~ Division under G.S. 96-10. The provisions of this section, however, shall not have the effect of releasing any liens for contributions, penalties or interest, or either of the same, imposed by other law, nor shall they have the effect of postponing the payment of said contributions, penalties or interest, or depriving the ~~said Employment Security Commission of North Carolina~~ Division of Employment Security of any priority in order of payment provided in any other statute under which payment of the said contributions, penalties and interest or either of the same may be required. The superior court or any appellate court shall have full power and authority to issue any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of said decision or determination of the ~~Commission~~ Division or to collect any amount of contribution, penalty or interest adjudged to be due the ~~Commission~~ Division by said decision or determination. In case of an appeal from any decision or determination of the ~~Commission~~ Division to the superior court or from any judgment of the superior court to the appellate division all proceedings to enforce said judgment, decision, or determination shall be stayed until final determination of such appeal but no proceedings for the collection of any amount of contribution, penalty or interest due on same shall be suspended or stayed unless the employer or party adjudged to pay the same shall file with the clerk of the superior court a bond in such amount not exceeding double the amount of contribution, penalty, interest or amount due and with such sureties as the clerk of the superior court deems necessary conditioned upon the payment of the contribution, penalty, interest or amount due when the appeal shall be finally decided or terminated.

~~(p)~~(t) The conduct of hearings shall be governed by suitable rules and regulations established by the ~~Commission~~ Secretary of Commerce. The manner in which appeals and hearings shall be presented and conducted before the ~~Commission~~ Division shall be governed by suitable rules and regulations established by ~~it~~ the Secretary. The ~~Commission~~ Division shall not be bound by common-law or statutory rules of evidence or by technical or formal rules of procedure but shall conduct hearings in such manner as to ascertain the substantial rights of the parties.

~~(q)~~(u) Notices of hearing shall be issued by the ~~Commission~~ Division 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~~ 15 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~~ Division or its authorized representative and shall order ~~him~~ the witness 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~~ Department of Commerce. Any such bond or other undertaking may be forfeited or sued upon as are any other undertakings payable to the State.

~~(r)(v)~~ (v) None of the provisions or sections herein set forth in subsections ~~(m)-(q)~~ ~~(q)-(u)~~ shall have the force and effect nor shall the same be construed or interpreted as repealing any of the provisions of G.S. 96-15 which provide for the procedure and determination of all claims for benefits and such claims for benefits shall be prosecuted and determined as provided by said G.S. 96-15.

~~(s)(w)~~ (w) Upon a finding of good cause, the ~~Commission~~ Division shall have the power in its sole discretion to forgive, in whole or in part, any overpayment arising under G.S. 96-18(g)(2).

~~(t)(x)~~ (x) Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government.

- (1) Confidentiality of Information Contained in Records and Reports. – (i) Except as hereinafter otherwise provided, it shall be unlawful for any person to obtain, disclose, or use, or to authorize or permit the use of any information which is obtained from any employing unit, individual, or unit of government pursuant to the administration of this Chapter or G.S. 108A-29. (ii) Any claimant or employer or their legal representatives shall be supplied with information from the records of the ~~Employment Security Commission~~ Division to the extent necessary for the proper presentation of claims or defenses in any proceeding under this Chapter. Notwithstanding any other provision of law, any claimant may be supplied, subject to restrictions as the ~~Commission~~ Division may by regulation prescribe, with any information contained in his payment record or on his most recent monetary determination, and any individual, as well as any interested employer, may be supplied with information as to the individual's potential benefit rights from claim records. (iii) Subject to restrictions as the ~~Commission~~ Secretary may by regulation provide, information from the records of the ~~Employment Security Commission~~ Division may be made available to any agency or public official for any purpose for which disclosure is required by statute or regulation. (iv) The ~~Commission~~ Division may, in its sole discretion, permit the use of information in its possession by public officials in the performance of their public duties. (v) The ~~Commission~~ Division shall release the payment and the amount of unemployment compensation benefits upon receipt of a subpoena in a proceeding involving child support. (vi) The ~~Commission~~ Division shall furnish to the State Controller any information the State Controller needs to prepare and publish a comprehensive annual financial report of the State or to track debtors of the State.
- (2) Job Service Information. – (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the ~~North Carolina State Employment Service~~ Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the ~~Commission~~ Division have agreed upon in writing. (ii) The ~~Employment Service~~ Division shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (iii) The Labor Market Information ~~Division~~ Unit shall collect, collate, and publish statistical and other

information relating to the work under the ~~Commission's~~Division's jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the ~~Commission's~~Division's opinion may make further legislation desirable. (iv) Except as provided by ~~Commission regulation, rules adopted by the Division,~~ any information published pursuant to this subdivision shall not be published in any manner revealing the identity of the applicant or the employing unit.

- (3) Penalties for Disclosure or Improper Use. – Any person violating any provision of this section may be fined not less than twenty dollars (\$20.00) nor more than two hundred dollars (~~\$200.00~~), ~~or imprisoned for not longer than 90 days, or both (\$200.00).~~
- (4) Regulations. – The ~~Commission~~Division may provide by ~~regulation~~rule for procedures by which requests for information will be considered and the methods by which such information may be disclosed. The ~~Commission~~Division is authorized to provide by regulation for the assessment of fees for securing and copying information released under this section.
- (5) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. – All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to the ~~Commission~~Division or any of its agents, representatives, or employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter and except proceedings involving child support and only for the purpose of establishing the payment and amount of unemployment compensation benefits. Nothing in this subdivision shall be construed to prohibit the ~~Commission,~~Division, upon written request and on a reimbursable basis only, from disclosing information from the records of a proceeding ~~before an appeals referee, deputy commissioner, or other hearing officer by whatever name called,~~ compiled for the purpose of resolving issues raised pursuant to the Employment Security Law.
- (6) Nothing in this subsection (t) shall operate to relieve any claimant or employing unit from disclosing any information required by this Chapter or by regulations promulgated thereunder.
- (7) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~Division from allowing any individual or entity to examine and copy any report, return, or any other written communication made by that individual or entity to the ~~Commission,~~Division, its agents, or its employees.
- (7a) Nothing in this subsection (~~t~~) shall be construed to prevent the ~~Commission~~Division from disclosing, upon request and on a reimbursable basis only, to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency as defined in Section 303(i)(4) of the Social Security Act, any information from the records of the ~~Employment Security Commission~~Division with respect to individuals applying for or participating in any housing assistance program administered by the Department of Housing and Urban Development who have signed an appropriate consent form approved by the Secretary of



Housing and Urban Development. It is the purpose of this paragraph to assure the ~~Employment Security Commission's~~ compliance with Section 303(i)(1) of the Social Security Act and it shall be construed accordingly.

- (7b) Nothing in this subsection ~~(t)~~ shall be construed to prevent the ~~Commission~~ Division from disclosing, upon request and on a reimbursable basis, to the Secretary of Health and Human Services, any information from the records of the ~~Employment Security Commission~~ Division as may be required by Section 303(h)(1) of the Social Security Act. It is the purpose of this paragraph to assure compliance with Section 303(h)(1) of the Social Security Act and it shall be construed accordingly.
- (8) Any finding of fact or law, judgment, determination, conclusion or final order made by ~~an adjudicator, appeals referee, commissioner, the Commission~~ the Assistant Secretary, the Board of Review, a hearing officer, appeals referee, or any other person acting under authority of the ~~Commission~~ Division pursuant to the Employment Security Law is not admissible or binding in any separate or subsequent action or proceeding, between a person and his present or previous employer brought before an arbitrator, court or judge of this State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

Provided, however, any finding of fact or law, judgment, determination, conclusion, or final order made by ~~an adjudicator, appeals referee, commissioner, the Commission~~ the Assistant Secretary, the Board of Review, a hearing officer, appeals referee, or any other person acting under the authority of the ~~Commission~~ Division pursuant to the Employment Security Law shall be admissible in proceedings before the North Carolina Industrial Commission.

~~(u)~~(y) Service of process upon the ~~Commission~~ Division in any proceeding instituted before an administrative agency or court of this State shall be pursuant to G.S. 1A-1, Rule 4(j)(4); however, notice of the requirement to withhold unemployment compensation benefits pursuant to G.S. 110-136.2(f) shall be served upon the process agent for the ~~Employment Security Commission~~ Division by regular or courier mail.

~~(v)~~(z) Advisory rulings may be made by the ~~Commission~~ Division with respect to the applicability of any statute or rule administered by the ~~Commission~~ Division, as follows:

- (1) All requests for advisory rulings shall be made in writing and submitted to the ~~Chief Counsel~~ Division. Such requests shall state the facts and statutes or rules on which the ruling is requested.
- (2) The ~~Chief Counsel~~ Division may request from any person securing an advisory ruling any additional information that is necessary. Failure to supply such additional information shall be cause for the ~~Commission~~ Division to decline to issue an advisory ruling.
- (3) The ~~Commission~~ Division may decline to issue an advisory ruling if any administrative or judicial proceeding is pending with the person requesting the ruling on the same factual grounds. The ~~Commission~~ Division may decline to issue an advisory ruling if such a ruling may harm the ~~Commission's~~ Division's interest in any litigation in which it is or may be a party.
- (4) All advisory rulings shall be issued no later than 30 days from the date all information necessary to make a ruling has been received by the ~~Chief Counsel~~ Division.

- (5) No advisory ruling shall be binding upon the ~~Commission~~Division provided that in any subsequent enforcement action initiated by the ~~Commission~~Division, any person's reliance on such ruling shall be considered in mitigation of any penalty sought to be assessed."

**SECTION 2.4.** G.S. 96-5 reads as rewritten:

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

(a) Special Fund. – There is hereby created in the State treasury a special fund to be known as the Employment Security Administration Fund. All moneys which are deposited or paid into this fund shall be continuously available to the ~~Commission~~Secretary for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. The Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter. The fund shall consist of all moneys appropriated by this State, all moneys received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this Chapter: Provided, any interest collected on contributions and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment Security Administration Fund created by subsection (c) of this section. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Employment Security Administration Fund shall be deposited in said fund.

(b) Replacement of Funds Lost or Improperly Expended. – If any moneys received from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered balances in the Employment Security Administration Fund or any moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this State or its political subdivisions and matched by such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of those found necessary by the Secretary of Labor for the proper administration of this Chapter, it is the policy of this State that such moneys, not available from the Special Employment Security Administration Fund established by subsection (c) of this section, shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Employment Security Administration Fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the Secretary of Labor, the ~~Commission~~

Division shall promptly pay from the Special Employment Security Administration Fund such sum if available in such fund; if not available, it shall promptly report the amount required for such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount.

(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the ~~Commission-Secretary~~ for the administration of this Chapter. Said fund shall be used by the ~~Commission-Division~~ for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and shall also be used by the ~~Commission-Secretary~~ for: (i) extensions, repairs, enlargements and improvements to buildings, and the enhancement of the work environment in buildings used for ~~Commission-Division~~ business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious handling of ~~Commission-Division~~ business; and (iii) the temporary stabilization of federal funds cash flow. The ~~Employment-Security-Commission-Division~~ may use funds either from the Special Employment Security ~~Commission-Administration~~ Fund created by this subsection or from federal funds, or from a combination of the two, to offset the costs of compliance with Article 7A of Chapter 163 of the General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the ~~Commission-Division~~ for expenditure in accordance with the provisions of this section.

(c1) Repealed by Session Laws 2004-124, s. 13.7B(b), effective July 20, 2004.

(d) The other provisions of this section and G.S. 96-6, to the contrary notwithstanding, the ~~Commission-Secretary~~ is authorized to requisition and receive from its account in the unemployment trust fund in the treasury of the United States of America, in the manner permitted by federal law, such moneys standing to its credit in such fund, as are permitted by federal law to be used for expense of administering this Chapter and to expend such moneys for such purpose, without regard to a determination of necessity by a federal agency. The State Treasurer shall be treasurer and custodian of the amounts of money so requisitioned. Such

moneys shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State treasury.

(e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General Assembly of North Carolina to the ~~Employment Security Commission~~ Department of Commerce, Division of Employment Security 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~~ Division 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~~ Division, 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.

(f) Employment Security ~~Commission~~ Reserve Fund. – There is created in the State treasury a special trust fund, separate and apart from all other public moneys or funds of this State, to be known as the Employment Security ~~Commission~~ Reserve Fund, hereinafter "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve Fund may be used by the ~~Commission~~ Secretary for loans to the Unemployment Insurance Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay any interest required on advances under Title XII of the Social Security Act, and shall be continuously available to the ~~Commission~~ Division for expenditure in accordance with the provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian and shall invest said moneys in accordance with existing law as well as rules and regulations promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in accordance with the directions of the ~~Commission~~ Secretary and in accordance with such regulations as the ~~Commission~~ Secretary may prescribe.

Administrative costs for the collection of the tax and interest payable to the Reserve Fund shall be borne by the Special Employment Security Administration Fund.

The interest earned from investment of the Reserve Fund moneys shall be deposited in a fund hereby established in the State Treasurer's Office, to be known as the "Worker Training Trust Fund". These moneys shall be used to:

- (1) Fund programs, specifically for the benefit of unemployed workers or workers who have received notice of long-term layoff or permanent unemployment, which will enhance the employability of workers, including, but not limited to, adult basic education, adult high school or equivalency programs, occupational skills training programs, assessment, job counseling and placement programs;
- (2) Continue operation of local ~~Employment Security Commission~~ Division offices throughout the State; or
- (3) Provide refunds to employers.

The use of funds from the Worker Training Trust Fund, for the purposes set out in the above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations Act. Funds appropriated from the Worker Training Trust Fund that are unexpended and unencumbered at the end of the fiscal year for which they are appropriated shall revert to the State

treasury to the credit of the Worker Training Trust Fund in accordance with G.S. 143C-1-2.

(g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not more than a total of twenty-five million dollars (\$25,000,000) of funds in the Employment Security ~~Commission~~ Reserve Fund established under subsection (f) of this section in securities issued by the North Carolina Technological Development Authority, Inc., the proceeds for which are directed to support investment in venture capital funds. The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on October 1 and March 1 of each fiscal year on investments made pursuant to this subsection."

**SECTION 2.5.** G.S. 96-6 reads as rewritten:

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

(a) Establishment and Control. – There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered by the ~~Commission~~ Division's Employment Insurance Section exclusively for the purposes of this Chapter. This fund shall consist of:

- (1) All contributions collected under this Chapter, together with any interest earned upon any moneys in the fund;
- (2) Any property or securities acquired through the use of moneys belonging to the fund;
- (3) All earnings of such property or securities;
- (4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;
- (5) All moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as amended, (U.S.C.A. Title 42, sec. 1103 (a));
- (6) All moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970;
- (7) Reimbursement payments in lieu of contributions.

All moneys in the fund shall be commingled and undivided.

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

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

All moneys payable to the fund, upon receipt thereof by the ~~Commission~~ Division, shall be forwarded immediately to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in G.S. 143B-426.40G under the requisition of the ~~Commission~~ Division. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the ~~Commission~~ Secretary, in any bank or public depository in which general

funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment insurance fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the unemployment insurance fund shall be deposited in said fund.

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

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

(e) Benefits shall be deemed to be due and payable under this Chapter only to the extent provided in this Chapter and to the extent that moneys are available therefor to the credit of the

Unemployment Insurance Fund, and neither the State nor the ~~Commission~~ Division shall be liable for any amount in excess of such sums.

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

**SECTION 2.6.** G.S. 96-7(a) reads as rewritten:

"(a) In any civil action to enforce the provisions of this Chapter, the ~~Commission Secretary, the Department,~~ and the State may be represented by any qualified attorney who is designated by it for this purpose."

**SECTION 2.7.(a)** G.S. 96-8(2) is repealed.

**SECTION 2.7.(b)** G.S. 96-8 is amended by adding the following new subdivisions to read:

**"§ 96-8. Definitions.**

As used in this Chapter, unless the context clearly requires otherwise:

...

(3a) Department. – The North Carolina Department of Commerce.

(3b) Division or DES. – The Department's Division of Employment Security.

(3c) EIS. – The Employment Insurance Section of DES.

(3d) ESS. – The Employment Security Section of DES.

...

(8c) Secretary. – The Secretary of the Department of Commerce or the Assistant Secretary in charge of the Division of Employment Security.

...."

**SECTION 2.7.(c)** G.S. 96-8(5)a. and b. read as rewritten:

"(5) "Employer" means:

a. Any employing unit which (a) within the current or preceding calendar year, and which for some portion of a day in each of 20 different calendar weeks within such calendar year (whether or not such weeks are or were consecutive), has or had in employment one or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week); or (b) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars (\$1,500) or more. Provided further, for the purpose of this paragraph, "employment" shall include services which would constitute "employment" but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the ~~Commission~~ Division pursuant to subsection (l) of G.S. 96-4, and an agency charged with the administration of any other state or federal employment security law. Provided further, for the purpose of this paragraph, "week" means a period of seven consecutive calendar days, and when a calendar week falls partly within each of two calendar years, the days of that week up to January 1 shall be deemed one calendar week, and the days beginning January 1, another such week.

b. Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Chapter, or which acquired a part of the organization, trade, or business of another, which at the time of such acquisition was an employer

subject to this Chapter; provided, such other would have been an employer under paragraph a of this subdivision if such part had constituted its entire organization, trade, or business; provided further, that G.S. 96-10, subsection (d), shall not be applicable to an individual or employing unit acquiring such part of the organization, trade or business. The provisions of G.S. 96-11(a) to the contrary notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this Chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this Chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the ~~Commission~~ Division within 60 days from the date the ~~Commission~~ Division mails him a notification of his liability and provided the ~~Commission~~ Division finds the predecessor was an employer at the time of such acquisition only because such predecessor had failed to make application for termination of coverage as provided in G.S. 96-11 of this Chapter. A successor under the provisions of this paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the ~~Commission~~ Division within 60 days from the date the ~~Commission~~ Division mails him a notification of his liability and the ~~Commission~~ Division finds that the predecessor could have terminated by making the application under G.S. 96-11 if the part acquired had constituted all of the predecessor's business."

**SECTION 2.7.(d)** G.S. 96-8(6)d., f.2., and k.3. read as rewritten:

"(6) d. Services not covered under paragraph b of this subdivision, and performed entirely without this State, with respect to no part of which contributions are required and paid under an employment security law of any other state or of the federal government, shall be deemed to be employment subject to this Chapter if the individual performing such service is a resident of this State and the ~~Commission~~ Division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Chapter, and services covered by an election duly approved by the ~~Commission~~ Division in accordance with an arrangement pursuant to subsection (l) of G.S. 96-4 shall be deemed to be employment during the effective period of such election.

...  
f. The term "employment" shall include:

...  
2. Services covered by an election duly approved by the ~~Commission~~ Division in accordance with an arrangement



pursuant to G.S. 96-4, subsection (l), of this Chapter during the effective period of such election.

...  
k. The term "employment" does not include:

...  
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~~Division 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.

...."  
**SECTION 2.7.(e)** G.S. 96-8(10) reads as rewritten:

"(10) **(Effective until July 1, 2011)** Total and partial unemployment.

- a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:
  1. If the individual has payroll attachment but, because of lack of work during the payroll week for which the individual is requesting the establishment of a benefit year, the individual worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which the individual has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.
  2. If the individual has no payroll attachment on the date the individual 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 rules adopted by the Division.
- b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:
  1. Totally unemployed, irrespective of job attachment, if a claimant's earnings for such week, including payments defined in subparagraph c below, would not reduce the claimant's weekly benefit amount as prescribed by G.S. 96-12(c).
  2. Partially unemployed, if the claimant has payroll attachment but because of lack of work during the payroll week for which the claimant is requesting benefits the claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which the claimant is employed and whose earnings from such employment (including payments defined in subparagraph c below) would

- qualify the claimant 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 the claimant for a reduced payment as prescribed by G.S. 96-12(c).
- c. (For suspension of enforcement, see note) No individual shall be considered unemployed if, with respect to the entire calendar week, the individual is receiving, has received, or will receive as a result of the individual's separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) separation pay, or (v) 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. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. Benefits paid under this subdivision shall not be charged to the account or accounts of the base period employer or employers.
  - d. An individual's week of unemployment shall be deemed to commence only after ~~his~~the individual's registration at an employment office, except as the ~~Commission may by regulation~~Division by rule may otherwise prescribe.
  - e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.
  - f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more.
- (10) **(Effective July 1, 2011)** 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, because of lack of work 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 preceding the payroll week ending date.
    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-rules adopted by the Division.
- 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 because of lack of work 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. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or ~~Commission~~ Division approved vocational, educational, or training programs as defined in G.S. 96-13.
  - d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the ~~Commission~~ Division may by ~~regulation~~ rule otherwise prescribe.
  - e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.
  - f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work

unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more."

**SECTION 2.7.(f)** G.S. 96-8(13)a. and d. read as rewritten:

"(13) a. "Wages" shall include commissions, bonuses, any sums paid to an employee by an employer pursuant to an order of any court, the National Labor Relations Board, or any other lawfully constituted adjudicative agency or by private agreement, consent, or arbitration for loss of pay by reason of discharge, and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the ~~Commission~~; Division; provided, if the remuneration of an individual is not based upon a fixed period or 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. The regulations shall, so far as possible, secure results reasonably similar to those that would prevail if the individual were paid his wages at regular intervals. The term "wages" shall not include the amount of any payment with respect to services to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical and hospitalization expenses in connection with sickness or accident disability or (iv) death. However, in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, only payments which are received under a worker's compensation law shall be excluded from the term "wages". Furthermore, the term "wages" shall not include payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.

...

d. Wages shall not include the amount of any payment, including any amount paid into a fund to provide for such payment, made to, or on behalf of, an employee under a plan or system established by an employer or others which makes provision for employees generally, or for a class or group of employees, for the purpose of supplementing unemployment benefits, provided that the plan has been approved by the ~~Commission~~ Division under such reasonable ~~regulations~~ rules as it shall ~~promulgate~~ adopt."

**SECTION 2.7.(g)** G.S. 96-8(22) and (24) read as rewritten:

"(22) Average Weekly Insured Wage. – "Average weekly insured wage" is the quotient obtained by dividing the total of the wages, as defined in G.S. 96-8(12) and (13), reported by all insured employers by the monthly average in insured employment under this Chapter during the immediately preceding calendar year and further dividing the quotient obtained by 52 to obtain a weekly rate. (For this computation the data as released annually in the ~~Employment Security Commission's~~ Division's publication "North Carolina Insured Employment and Wage Payment" shall be used). The quotient thus obtained shall be deemed to be the average weekly wage for such year.

...

(24) Work, for purposes of this Chapter, means any bona fide permanent employment the acceptance of which would not result in an undue family hardship as defined in G.S. 96-8(10a). For purposes of this definition, "bona fide permanent employment" is presumed to include only those employments of greater than 30 consecutive calendar days duration (regardless of whether work is performed on all those days) provided: (a) the presumption that an employment lasting 30 days or less is not bona fide permanent employment may be rebutted by a finding by the ~~Commission, Division,~~ either on its own motion or upon a clear and convincing showing by an interested party that the application of the presumption would work a substantial injustice in view of the intent of this Chapter; (b) Any decision of the ~~Commission-Division~~ on the question of bona fide employment may be disturbed on judicial review only upon a finding of plain error."

**SECTION 2.8.** G.S. 96-9 reads as rewritten:

**"§ 96-9. Contributions.**

(a) Payment. –

(1) Except as provided in subsection (d) hereof, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Chapter, with respect to wages for employment (as defined in G.S. 96-8(6)). Such contributions shall become due and be paid by each employer to the ~~Commission-Division~~ for the fund in accordance with such regulations as the ~~Commission-Division~~ may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ. Contributions shall become due on and shall be paid on or before the last day of the month following the close of the calendar quarter in which such wages are paid and such contributions shall be paid by each employer to the ~~Commission-Division~~ for the fund in accordance with such regulations as the ~~Commission-Division~~ may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided, further, that if the ~~Commission-Division~~ shall be advised by its duly authorized officers or agents that the collection of any contribution under any provision of this Chapter will be jeopardized by delay, the ~~Commission-Division~~ may, whether or not the time otherwise prescribed by law for making returns and paying such tax has expired, immediately assess such contributions (together with all interest and penalties, the assessment of which is provided for by law). Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the ~~Commission-Division~~ for the payment thereof. Upon failure or refusal to pay such contributions, penalties, and interest, it shall be lawful to make collection thereof as provided by G.S. 96-10 and subsections thereunder and such collection shall be lawful without regard to the due date of contributions herein prescribed, provided, further, that nothing in this paragraph shall be construed as permitting any refund of contributions heretofore paid under the law and regulations in effect at the time such contributions were paid.

...

(3) Benefits paid employees of this State shall be financed and administered in accordance with the provisions and conditions of G.S. 96-9(d) required for nonprofit organizations; except as provided by suitable regulations which may be adopted by the ~~Commission-Division.~~ The Department of Administration shall make an election with respect to financing all such benefits.

...

- (6) If the amount of the contributions shown to be due after all credits is less than five dollars (\$5.00), no payment need be made. If an employer has paid contributions, penalties, and/or interest in excess of the amount due, this shall be considered an overpayment and refunded provided no other debts are owed to the ~~Commission-Division~~ by the employer. Overpayments of less than five dollars (\$5.00) shall be refunded only upon receipt by the Chairman of a written demand for such refund from the employer. Nothing herein shall be construed to change or extend the limitation set forth in G.S. 96-10(e), (f), and (i).
- (7) Effective with the quarter ending September 30, 1999, every employer with 100 or more employees, and every person or organization that, as agent, reports wages on a total of 100 or more employees on behalf of one or more subject employers, shall file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the ~~Commission-Division~~.
- For failure of an employer to comply with this subdivision, there shall be added to the amount required to be shown as tax in the reports a penalty of twenty-five dollars (\$25.00). For failure of an agent to comply with this subdivision, the ~~Commission-Division~~ may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The ~~Commission-Division~~ may reduce or waive a penalty for good cause shown.
- (8) An employer of domestic service employees as defined by the Internal Revenue Code may be given permission by the ~~Chair of the Commission Secretary~~ to file reports once a year on or before the last day of the month following the close of the calendar year in which the wages are paid. Permission to file a report annually may be revoked if the employer is found liable to the ~~Commission-Division~~ for quarterly contributions under subdivision (6) of this subsection.
- (9) Employers who are granted permission under subdivision (8) of this subsection to file annual reports may be given permission to file reports by telephone. Employers who report by telephone must contact either the Field Tax Auditor who is assigned to the employer's account or the ~~Unemployment Insurance Division~~ Employment Insurance Section in Raleigh and report the required information to that Auditor or to the Division by the date the report is due under subdivision (8) of this subsection.
- (10) Employers electing to do so may pay their quarterly tax contributions by electronic funds transfer. When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the ~~Commission-Division~~ shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). The ~~Commission-Division~~ may waive this penalty for good cause shown. As used in this section, the term "electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.
- (11) The ~~Commission-Division~~ may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by

credit card is receipt by the ~~Commission~~-Division of the full amount of taxes, penalties, and interest due. The ~~Commission~~-Division shall require an employer who pays by credit card to include an amount equal to any fee charged the ~~Commission~~-Division for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes.

(b) Rate of Contributions. –

...  
(2) Experience Rating. –

- ...  
b. Credit Ratio. – The ~~Commission~~-Division shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.
- c. Debit Ratio. – The ~~Commission~~-Division shall for each year compute a debit ratio for each employer whose account shows that the total of all its contributions paid and credited for all past periods in accordance with G.S. 96-9(c)(1) together with all other lawful credits is less than the total benefits charged to its account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.
- d. Other Provisions. – No employer's contribution rate shall be reduced below the standard rate for any calendar year unless its liability extends over a period of all or part of two consecutive calendar years and, as of August 1 of the second year, its credit reserve ratio meets the requirements of that schedule used in computing rates for the following calendar year, unless the employer's liability was established under G.S. 96-8(5)b and its predecessor's account was transferred as provided by G.S. 96-9(c)(4)a.

Whenever contributions are erroneously paid into one account which should have been paid into another account or which should have been paid into a new account, that erroneous payment can be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities

involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate can be made reducing the rate below the standard rate for any period in which the account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has had paid on the account of its employees any sum into another account, the ~~Commission-Division~~ shall collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years shall run from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith.

(3) ...  
d3.

The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does not apply, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission-Division~~ in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the ~~Commission-Division~~ in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

#### EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

		Rate Schedules (%)								
As Much As	But Less Than	A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%



0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%										
&										
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission~~-Division in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission~~-Division in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)									
As	Than	A	B	C	D	E	F	G	H	I	
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	

0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0%										
&										
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

g. Any employer may at any time make a voluntary contribution, additional to the contributions required under this Chapter, to the fund to be credited to its account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as this term is used in G.S. 96-8(8). Any voluntary contributions so made by an employer within 30 days after the date of mailing by the ~~Commission~~ Division pursuant to G.S. 96-9(c)(3) of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to its account as of the previous July 31. If, however, the voluntary contribution is made after July 31 of any year it shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9(b)(3) until the following July 31. The ~~Commission~~ Division in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of the voluntary contribution by the employer.

h. If, within the calendar month in which the computation date occurs, the ~~Commission~~ Division finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the ~~Commission~~ Division finds incorrect or insufficient, the ~~Commission~~ Division shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of such notice, the ~~Commission~~ Division shall compute such employing unit's rate of contributions on the basis of such estimates,

and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.

- i. Repealed by Session Laws 1987, c. 17, s. 5.
  - j. A tax is imposed upon contributions at the rate of twenty percent (20%) of the amount of contributions due. The tax is due and payable at the time and in the same manner as the contributions. The tax does not apply in a calendar year if, as of August 1 of the preceding year, either of the following conditions was met; (i) the amount in the Reserve Fund equals or exceeds one hundred sixty-three million three hundred forty-nine thousand dollars (\$163,349,000), which is one percent (1%) of taxable wages for calendar year 1984; or (ii) the balance in the Unemployment Insurance Fund established by G.S. 96-6(a) is five hundred million (\$500,000,000) or less. The collection of this tax, the assessment of interest and penalties on unpaid taxes, the filing of judgment liens, and the enforcement of the liens for unpaid taxes is governed by the provisions of G.S. 96-10 where applicable. Taxes collected under this subpart shall be credited to the Employment Security ~~Commission~~ Reserve Fund, and refunds of the taxes shall be paid from the same Fund. The clear proceeds of any civil penalties collected under this subpart shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any interest collected on unpaid taxes shall be credited to the Special Employment Security Administration Fund, and any interest refunded on taxes imposed by this subpart shall be paid from the same Fund.
- (c) (1) Except as provided in subsection (d) of this section, the ~~Commission~~ Division 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 behalf, provided the ~~Commission~~ Division shall credit the account of each employer in an amount equal to eighty percent (80%) of all voluntary contributions paid with respect to periods prior to January 1, 1984, and of all other contributions paid with respect to periods between July 1, 1965, and December 31, 1983. On the computation date, beginning first with August 1, 1948, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to this State's account in the unemployment trust fund in the treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such

voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this Act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Charging of benefit payments. –

- ...
- b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant's period of employment was 100 days or less; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family hardship shall not be charged to the account of an employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the ~~Commission~~ Division with such notices regarding any separation of the individual from work as are or may be required by the regulations of the ~~Commission~~ Division.

No benefit charges shall be made to the account of any employer who has furnished 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 work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with ~~Commission~~ Division regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by ~~an Adjudicator, Appeals Referee or the Commission~~ the Division if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

...

- (3) As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~Division shall determine the balance of each employer's account and shall furnish him with a statement of all charges and credits thereto. At the same time the ~~Commission~~Division shall notify each employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The ~~Commission~~Division may redetermine on its own motion within the same period of time.
- (4) Transfer of account. –
- a. ...
2. Consent. – When an employer, as defined in G.S. 96-8(5)b., in any manner acquires a distinct and severable portion of the organization, trade, or business of another employing unit, the part of the account of the predecessor that relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the ~~Commission~~Division in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition to the successor employer for use in the determination of the successor's rate of contributions, provided application for transfer is made within 60 days after the ~~Commission~~Division notifies the successor of the right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the ~~Commission~~Division of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to

G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

...

- b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the ~~Commission~~ Division of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

- c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

...

- (6) If the ~~Commission~~ Division finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the United Nations, such employer's experience rating account shall not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of such person or persons, the employer's account shall be deemed to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subdivision shall apply only to employers who are liable for contributions under the experience rating system of financing

unemployment benefits. This subdivision shall not be construed to apply to employers who are liable for payments in lieu of contributions or to employers using the reimbursable method of financing benefit payments.

(d) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this paragraph. For the purposes of this paragraph, a nonprofit organization is an organization (or group of organizations) described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(1) a. Any nonprofit organization which becomes subject to this Chapter on or after January 1, 1972, shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this paragraph to pay the ~~Commission~~-Division for the Unemployment Insurance Fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin within a benefit year established during the effective period of such election.

b. Any nonprofit organization which is or becomes subject to this Chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than four calendar years beginning with the date on which subjectivity begins by filing a written notice of its election with the ~~Commission~~-Division not later than 30 days immediately following the date of written notification of the determination of such subjectivity. Provided if notification is not by registered mail, the election may be made on or after January 1, 1972, within six months following the date of the written notification of the determination of such subjectivity. If such election is not made as set forth herein, no election can be made until after four calendar years have elapsed under the contributions method of payment.

c. Any nonprofit organization which makes an election in accordance with subparagraph b of this paragraph will continue after such four calendar years to be liable for payments in lieu of contributions until it files with the ~~Commission~~-Division a written notice terminating its election not later than 30 days prior to the next January 1, effective on such January 1. Provided, however, no employer granted or in reimbursement status will be allowed refund of any previous balances used in a transfer to reimbursement status.

d. Any nonprofit organization which has been paying contributions under this Chapter for a period of at least four consecutive calendar years subsequent to January 1, 1972, may elect to change to a reimbursement basis by filing with the ~~Commission~~-Division not later than 30 days prior to the next January 1 a written notice of election to become liable for payments in lieu of contributions, effective on such January 1. Such election shall not be terminable for a period of four calendar years. In the event of such an election, the account of such employer shall be closed and shall not be used in any future computation of such employer's contribution rate in any manner whatsoever.

d1. Any nonprofit organization which makes an election in accordance with subparagraph b. of this paragraph must secure such election by

making a payment in lieu of contributions as provided in subdivision (2) of this subsection, posting a surety bond from an insurance company duly licensed to conduct business in this State, or obtaining an irrevocable letter of credit with the ~~Commission~~Division to insure the payments in lieu of contributions as provided in subdivision (2) of this subsection. Any surety bond posted under this paragraph shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the ~~Commission~~Division. The ~~Commission~~Division may adopt rules to implement the provisions of this subparagraph.

- e. The ~~Commission~~Division, in accordance with such regulations as it may adopt, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this subparagraph and shall be processed as provided herein.

- a. Quarterly contributions and wage reports and advance payments shall be submitted to the ~~Commission~~Division quarterly under the same conditions and requirements of G.S. 96-9 and 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on such reports; provided that such advance payments shall become effective only with respect to the first four thousand two hundred dollars (\$4,200) in wages paid in a calendar year until January 1, 1978. On and after that date advance payments shall be effective with respect to the federally required wage base provided that after December 31, 1983, the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of such advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

Beginning January 1, 1978, any employer making quarterly reports of employment to the ~~Commission~~Division 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.

- b. The ~~Commission~~Division shall establish a separate account for each such employer and such account shall be credited, and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full and voluntary contributions are not applicable.

- ...
- d. As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~Division shall determine the balance of each such employer's account and shall furnish him with a statement of all charges and credits thereto.

Should the balance in such account not equal that requiring a refund, the employer shall upon notice and demand for payment



mailed to his last known address pay into his account an amount that will bring such balance to the minimum required for a refund. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment. Any such amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Should there be a debit balance in such account, the employer shall, upon notice and demand for payment, mailed to his last-known address, pay into his account an amount equal to such debit balance. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment.

Any such amount unpaid on the date due shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

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. Amounts due from any nonprofit organization to bring its account to a one percent (1%) balance shall be billed as soon as practical, and payment will be due within 60 days from the date of mailing of the statement of the amount due.

- e. The ~~Commission~~-Division may make necessary rules and regulations with respect to coverage of a group of nonprofit organizations and with respect to the reimbursement of benefits payments by such group of nonprofit organizations.

...

(e) In order that the ~~Commission~~-Division shall be kept informed at all times on the circumstances and conditions of unemployment within the State and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the ~~Commission~~-Division may deem necessary shall be made.

(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~~-Division 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~~-Division:
  - a. To pay contributions on an experience rating basis as provided in G.S. 96-9(a), (b), and (c); or,
  - b. To pay to the ~~Commission~~-Division, within 25 days from the date a list of benefit charges is mailed to such employing unit, a sum equal to the amount which its account would be charged if it were a tax paying employer under G.S. 96-9(c)(2).

- (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~~ adopted by the Division.
- (4) Any governmental entity paying by reimbursement as provided in subdivision (1) hereof shall not have any benefits paid against its account noncharged or forgiven except as provided in G.S. 96-9(d)(2)c.

(g) Nothing contained in subsections (d), (f), and (i) of this section prevents the ~~Commission~~ Division from providing any reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly, if in its sole discretion, the ~~Commission~~ Division considers such action to be in the best interest of the ~~Commission~~ Division and the affected employer(s).

(h) (1) Any nonprofit organization which has been paying contributions on a reimbursement basis for at least three consecutive calendar years during none of which years the benefit charges exceeded four tenths of one percent (.4%) of its taxable payroll may, before November 1 of the fourth or subsequent calendar year, elect to pay contributions by special reimbursement on the basis provided for in subdivision (2) below but only upon the following conditions:

...  
 b. The election shall apply to no less than the four calendar years following the year of election unless terminated by the ~~Commission~~ Division under subdivision (3) below.

...  
 e. No later than January 1 of the first year to which its election applies, the electing nonprofit organization shall furnish the ~~Commission~~ Division a letter of credit in an amount equal to one hundred fifty percent (150%) of the account balance required under subdivision (2) below.

f. The ~~Commission~~ Division shall by regulation prescribe the form of the letter of credit and the criteria for the financial institution issuing such letter of credit along with the form of election under this section.

(2) Any qualified nonprofit organization that meets the conditions of subdivision (1) above shall, upon the approval of its election by the ~~Commission~~ Division, pay contributions by special reimbursement as follows:

...  
 b. On the first day of each quarter of any calendar year, the ~~Commission~~ Division shall bill the employer for an amount necessary to bring its account to the required minimum balance, and the amount so billed is due no later than 25 days after the bill is mailed.

(3) If any electing organization shall fail to make any quarterly payment when due:

a. The ~~Commission~~ Division may draw the full amount of the letter of credit for application to the employer's account;

...  
 c. If, after demand, the organization shall fail to pay any sums required under paragraph b. above, the ~~Commission~~ Division may revoke the organization's election for special reimbursement and any difference

between the employer's account balance and one percent (1%) of its total taxable payroll shall become immediately due and payable.

- d. The ~~Commission~~-Division may, in addition, exercise any of the powers granted to it in G.S. 96-10 to collect any amount due.
- e. Pursuant to ~~such regulations as the Commission may adopt, rules adopted by the Division~~, the ~~Commission~~-Division shall afford any organization affected by this paragraph a hearing to determine if any increase in the organization's minimum required balance should be reduced, in whole or in part, or if any revocation of a special reimbursement election should be rescinded. If the ~~Commission~~, Division, in its sole discretion, is satisfied that the conditions giving rise to the increase or revocation have been corrected, it may reduce such increase or rescind such revocation provided that it may require as a condition of such reduction or rescission a new letter of credit up to three times the amount normally required.

...

(i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units shall be financed in accordance with the provisions of this subsection. For the purposes of this subsection, an "Indian tribe employing unit" is an Indian tribe, a subdivision or subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.

(1) Election. –

- a. An Indian tribe employing unit shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this subsection to pay the ~~Commission~~-Division for the Unemployment Insurance Fund an amount equal to the amount of benefits paid that is attributable to service in the employ of the unit, to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election.
- b. An Indian tribe employing unit may elect to become liable for payments in lieu of contributions for a period of not less than three calendar years by filing a written notice of its election with the ~~Commission~~-Division at least 30 days before the January 1 effective date of the election.
- c. An Indian tribe employing unit that makes an election in accordance with this subsection will continue after the end of the three calendar years to be liable for payments in lieu of contributions until it files with the ~~Commission~~-Division a written notice terminating its election at least 30 days before the January 1 effective date of the termination.
- d. The account of an Indian tribe employing unit that has been paying contributions under this Chapter for a period of at least three consecutive calendar years and that elects to change to a reimbursement basis shall be closed and shall not be used in any future computation of the unit's contribution rate in any manner.
- e. The ~~Commission~~, Division, in accordance with regulations it adopts, shall notify each Indian tribe employing unit of any determination of the effective date of any election it makes and of any termination of the election. These determinations shall be subject to reconsideration, appeal, and review.

(2) Procedure. – Indian tribe employing units' payments by reimbursement in lieu of contributions shall be made and processed as provided in this subdivision.

a. Quarterly contributions and wage reports and advance payments shall be submitted to the ~~Commission~~ Division quarterly under the same conditions and requirements of G.S. 96-9 and G.S. 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on the reports, and except that the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of these advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

Any Indian tribe employing unit 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.

b. The ~~Commission~~ Division shall establish a separate account for each Indian tribe employing unit paying by reimbursement. The account shall be credited and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full, and voluntary contributions are not applicable.

...

d. As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~ Division shall determine the balance of each Indian tribe employing unit's account and shall furnish the unit with a statement of all charges and credits to the account.

If the balance in the account does not equal one percent (1%) of taxable wages, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount that will bring the balance to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

If there is a debit balance in the account, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount necessary to bring the account to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

...

(4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection after all collection activities considered necessary by the ~~Commission~~ Division have been exhausted, services performed for that employing unit are no longer treated as "employment" for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if the ~~Commission~~ Division determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.

The ~~Commission-Division~~ shall notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subdivision.

...."

**SECTION 2.9.** G.S. 96-10 reads as rewritten:

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

(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the ~~Commission-Division~~, shall bear interest at the rate set under G.S. 105-241.21 per month from and after that date until payment plus accrued interest is received by the ~~Commission-Division~~. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added. The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this ~~Commission-Division~~, and the contributions were legally payable to this State, the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of the other state or the United States.

(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 ~~Commission-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 ~~Commission-Division~~, under the hand of ~~its chairman, 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 ~~Commission-Division~~ has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars (\$50.00), the ~~Commission-Division~~ may not certify the amount to the clerk of court until a field tax auditor or another representative of the ~~Commission-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 ~~Commission-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 ~~Commission-Division~~, and when so forwarded and in the hands of such sheriff or agent of the ~~Commission-Division~~, shall have all the force and effect of an execution issued to such sheriff or agent of the

~~Commission~~Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the ~~Commission~~Division may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the ~~Commission~~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 ~~Commission~~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 ~~Commission~~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 ~~Commission~~Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the ~~Commission~~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 ~~Commission~~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 ~~Commission~~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 ~~Commission~~Division, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the ~~Commission~~Division for service the said agent of the ~~Commission~~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 ~~Commission~~Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the ~~Commission~~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 ~~Commission~~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 ~~Commission~~Division and within the time provided by law, the official bond of such sheriff or of such agent of the ~~Commission~~Division shall be liable for the contributions, penalty, interest, and costs due by the employer.

- (2) Any representative of the ~~Employment Security Commission~~Division may examine and copy the county tax listings, detailed inventories, statements of assets or similar information required under General Statutes, Chapter 105, to be filed with the tax supervisor of any county in this State by any person, firm, partnership, or corporation, domestic or foreign, engaged in operating any business enterprise in such county. Any such information obtained by an agent or employee of the ~~Commission~~Division shall not be divulged, published, or open to public inspection other than to the ~~Commission's~~Division's employees in the performance of their public duties. Any employee ~~or member of the Commission~~of the Division who violates any provision of this section shall be fined not less than twenty dollars (\$20.00), nor more than two hundred dollars (\$200.00), or imprisoned for not longer than 90 days, or both.

- (3) When the ~~Commission-Division~~ furnishes the clerk of superior court of any county in this State a written statement or certificate to the effect that any judgment docketed by the ~~Commission-Division~~ against any firm or individual has been satisfied and paid in full, and said statement or certificate is signed by the ~~chairman of the Commission-Secretary of Commerce~~ and attested by ~~its secretary, the Assistant Secretary,~~ with the seal of the ~~Commission-Division~~ affixed, it shall be the duty of the clerk of superior court to file said certificate and enter a notation thereof on the margin of the judgment docket to the effect that said judgment has been paid and satisfied in full, and is in consequence canceled of record. ~~Such~~ The cancellation shall have the full force and effect of a cancellation entered by an attorney of record for the ~~Commission-Division~~. It shall also be the duty of such clerk, when any such certificate is furnished him by the ~~Commission-Division~~ showing that a judgment has been paid in part, to make a notation on the margin of the judgment docket showing the amount of such payment so certified and to file said certificate. This paragraph shall apply to judgments already docketed, as well as to the future judgments docketed by the ~~Commission-Division~~. For the filing of said statement or certificate and making new notations on the record, the clerk of superior court shall be paid a fee of fifty cents (50¢) by the ~~Commission-Division~~.

(c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars (\$250.00) to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act (U.S.C., Title 11, section 104(a)), as amended.

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-Division~~ any contributions, penalties or interest then due out of moneys or assets on hand or coming into his possession before any such moneys or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership.

(d) Collections of Contributions upon Transfer or Cessation of Business. – The contribution or tax imposed by G.S. 96-9, and subsections thereunder, of this Chapter shall be a lien upon the assets of the business of any employer subject to the provisions hereof who shall lease, transfer or sell out his business, or shall cease to do business and such employer shall be required, by the next reporting date as prescribed by the ~~Commission-Division~~, to file with the ~~Commission-Division~~ all reports and pay all contributions due with respect to wages payable for employment up to the date of such lease, transfer, sale or cessation of the business and such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and unpaid until such time as the former owner or employer shall produce a receipt from the ~~Commission-Division~~ showing that the contributions have been paid, or a certificate that no contributions are due. If the purchaser of a business or a successor of such employer shall fail to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the contributions shall be due and unpaid after the next reporting date, as above set forth, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the contributions

accrued and unpaid on account of the operation of the business by the former owner or employer.

(e) Refunds. – If not later than five years from the last day of the calendar year with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employer or employing unit who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund, and the ~~Commission-Division~~ shall determine that such contributions or any portion thereof was erroneously collected, the ~~Commission-Division~~ shall allow such employer or employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such an adjustment cannot be made in the next succeeding calendar quarter after such application for such refund is received, a cash refund may be made, without interest, from the fund: Provided, that any interest refunded under this subsection, which has been paid into the Special Employment Security Administration Fund established pursuant to G.S. 96-5(c), shall be paid out of such fund. For like cause and within the same period, adjustment or refund may be so made on the ~~Commission's Division's~~ own initiative. Provided further, that nothing in this section or in any other section of this Chapter shall be construed as permitting the refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. In any case, where the ~~Commission-Division~~ finds that any employing unit has erroneously paid to this State contributions or interest upon wages earned by individuals in employment in another state, refund or adjustment thereof shall be made, without interest, irrespective of any other provisions of this subsection, upon satisfactory proof to the ~~Commission-Division~~ that such other state has determined the employing unit liable under its law for such contributions or interest.

(f) No injunction shall be granted by any court or judge to restrain the collection of any tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain the sale of any property under writ of execution, judgment, decree or order of court for the nonpayment thereof. Whenever any employer, person, firm or corporation against whom taxes or contributions provided for in this Chapter have been assessed, shall claim to have a valid defense to the enforcement of the tax or contribution so assessed or charged, such employer, person, firm or corporation shall pay the tax or contribution so assessed to the ~~Commission-Division~~; but if at the time of such payment he shall notify the ~~Commission-Division~~ in writing that the same is paid under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the ~~Commission-Division~~; and if the same shall not be refunded within 90 days thereafter, he may sue the ~~Commission-Division~~ for the amount so demanded; such suit against the ~~Employment Security Commission of North Carolina-Division~~ must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides, or in the county where the taxpayer conducts his principal place of business; and if, upon the trial it shall be determined that such tax or contribution or any part thereof was for any reason invalid, excessive or contrary to the provisions of this Chapter, the amount paid shall be refunded by the ~~Commission-Division~~ accordingly. The remedy provided by this subsection shall be deemed to be cumulative and in addition to such other remedies as are provided by other subsections of this Chapter. No suit, action or proceeding for refund or to recover contributions or payroll taxes paid under protest according to the provisions of this subsection shall be maintained unless such suit, action or proceeding is commenced within one year after the expiration of the 90 days mentioned in this subsection, or within one year from the date of the refusal of ~~said Commission-the Division~~ to make refund should such refusal be made before the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed as repealing, abridging or extending any other limitation or condition imposed by this Chapter.



(g) Upon the motion of the ~~Commission, Division~~, any employer refusing to submit any report required under this Chapter, after 10 days' written notice sent by the ~~Commission Division~~ by registered or certified mail to the employer's last known address, may be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such report is properly submitted. When an execution has been returned to the ~~Commission Division~~ unsatisfied, and the employer, after 10 days' written notice sent by the ~~Commission Division~~ by registered mail to the employer's last known address, refuses to pay the contributions covered by the execution, such employer shall upon the motion of the ~~Commission Division~~ be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such contributions have been paid.

An employer who fails to file a report within the required time shall be assessed a late filing penalty of five percent (5%) of the amount of contributions due with the report for each month or fraction of a month the failure continues. The penalty may not exceed twenty-five percent (25%) of the amount of contributions due. An employer who fails to file a report within the required time but owes no contributions shall not be assessed a penalty unless the employer's failure to file continues for more than 30 days.

(h) When any uncertified check is tendered in payment of any contributions to the ~~Commission Division~~ and such check shall have been returned unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, a penalty shall be payable to the ~~Commission, Division~~, equal to ten percent (10%) of the amount of said check, and in no case shall such penalty be less than one dollar (\$1.00) nor more than two hundred dollars (\$200.00).

(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 ~~chairman~~ Assistant Secretary of the ~~Commission Division~~ 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 ~~Commission 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.

(j) Waiver of Interest and Penalties. – The ~~Commission Division~~ may, for good cause shown, reduce or waive any interest assessed on unpaid contributions under this section. The ~~Commission Division~~ may reduce or waive any penalty provided in G.S. 96-10(a) or G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

- (1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;

- (2) Destruction of the employer's place of business or business records by fire or other casualty;
- (3) Failure of the ~~Commission-Division~~ to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;
- (4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the ~~Commission-Division~~ upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;
- (5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and
- (6) Other circumstances where, in the opinion of the ~~Chairman, the Assistant Administrator, or their Secretary, Assistant Secretary, or their~~ designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the ~~Chairman, the Assistant Administrator, or their Secretary, Assistant Secretary, or their~~ designees, that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances.

The waiver or reduction of interest or a penalty under this subsection shall be valid and binding upon the ~~Commission-Division~~. The reason for any reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies."

**SECTION 2.10.** G.S. 96-11 reads as rewritten:

**"§ 96-11. Period, election, and termination of employer's coverage.**

...

(b) Prior to January 1, 1972, and except as otherwise provided in subsections (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January of any calendar year, if it files with the ~~Commission-Division~~ prior to the first day of March of such calendar year a written application for termination of coverage and the ~~Commission-Division~~ finds that there were no 20 different weeks in the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week); provided that on and after January 1, 1972, except as otherwise provided in subsections (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission-Division~~ prior to the first day of March of such year a written application for termination of coverage and the ~~Commission-Division~~ finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed one or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individual was employed in each such week), and the ~~Commission-Division~~ finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars (\$1,500) or more. Any employing unit, as defined in G.S. 96-8(5)n, shall cease to be an employer only if it files with the ~~Commission-Division~~ by the first day of March of any calendar year an application for termination of coverage, and the ~~Commission-Division~~ finds

that there were no 20 different weeks within the preceding calendar year in which such employing unit had at least 10 individuals in employment, and that there was no calendar quarter within the preceding calendar year in which such employing unit paid twenty thousand dollars (\$20,000) or more in wages for services in employment. Any employing unit, as defined in G.S. 96-8(5)o, shall cease to be an employer if it files with the ~~Commission~~-Division by the first day of March of any calendar year an application for termination of coverage and the ~~Commission~~-Division finds that there was no calendar quarter within the preceding calendar year in which such employing unit paid one thousand dollars (\$1,000) or more in wages for services in employment. Provided further, except as otherwise provided in subsections (a), (c), and (d) of this section on and after January 1, 1974, an "employer" as the term is used in G.S. 96-8(5)k shall cease to be an employer subject to this Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission~~-Division prior to the first day of March of such year a written application for termination of coverage and the ~~Commission~~-Division finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). For the purpose of this subsection, the two or more employing units mentioned in paragraphs b or c of G.S. 96-8, subdivision (5) shall be treated as a single employing unit: Provided, however, that any employer, as the term is used in G.S. 96-8(5)k, whose liability covers a period of more than two years when first discovered by the ~~Commission~~-Division, upon filing a written application for termination within 90 days after notification of his liability by the ~~Commission~~-Division, may be terminated as an employer effective January 1; and for any subsequent year if the ~~Commission~~-Division finds there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). Provided further, any other employer whose liability covers a period of more than two years when first discovered by the ~~Commission~~-Division, upon filing a written application for termination within 90 days after notification of his liability by the ~~Commission~~-Division, may be terminated as an employer effective January 1, and for any subsequent years if the ~~Commission~~-Division finds that prior to January 1, 1972, there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week); and with respect to 1972 and subsequent years, if the ~~Commission~~-Division finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed one or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individual was employed in each such week), and the ~~Commission~~-Division finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars (\$1,500) or more. In such cases, a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final; provided further, this provision shall not apply in any case of willful attempt in any manner to defeat or evade the payment of contributions becoming due under this Chapter.

- (c) (1) An employing unit, not otherwise subject to this Chapter, which files with the ~~Commission~~-Division its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the ~~Commission~~-Division, become an employer subject hereto to the same extent as all other employers, as of the date stated in such

approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, it has filed with the ~~Commission~~ Division a written notice to that effect, provided such employing unit may be terminated by the ~~Commission~~ Division as provided under the provisions of subdivision ~~(3)~~(4) of this subsection.

(2) Any employing unit for which services that do not constitute employment as defined in this Chapter are performed may file with the ~~Commission~~ Division a written election that all such services performed by individuals in its employ, in one or more distinct establishments or places of business, shall be deemed to constitute employment for all the purposes of this Chapter for not less than two calendar years. Upon the written approval of such election by the ~~Commission~~ Division such services shall be deemed to constitute employment subject to this Chapter from and after the date stated in such approval. Such services shall cease to be deemed employment, subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, such employing unit has filed with the ~~Commission~~ Division a written notice to that effect, provided such employing unit may be terminated by the ~~Commission~~ Division as provided under the provisions of subdivision ~~(3)~~(4) of this subsection.

(3) ...

d. An election under this section may be terminated as of January 1 of any calendar year subsequent to such two calendar years only if 30 days prior to such January 1, such employer has filed with the ~~Commission~~ Division a written notice to that effect.

(4) On and after July 1, 1965, the ~~Commission~~ Division on its own motion and in its discretion, upon 30 days' written notice mailed to the last known address of such employer, may terminate coverage of any employer which has become subject to this Chapter solely by electing coverage under the provisions of this subsection.

(d) Except as provided in G.S. 96-9(c)(6), an employer who has not paid any covered wages for a period of two consecutive calendar years shall cease to be an employer subject to this Chapter. An employer who has not had individuals in employment and who has made due application for exemption from filing contributions and wage reports required under this Chapter and has been so exempted may be terminated from liability upon written application within 120 days after notification of the reactivation of his account. Such termination shall be effective January 1 of any calendar year only if the ~~Commission~~ Division finds there were no 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed one or more individuals in employment (four or more prior to January 1, 1972), not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week, and the ~~Commission~~ Division finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars (\$1,500) or more, except as otherwise provided. Provided further, an employer, as the term is used in G.S. 96-8(5)k, who has not had individuals in employment and who has made due application for exemption from filing contributions and wage reports required under this Chapter and has been so exempted may be terminated from liability upon written application within 120 days after notification of the reactivation of its account. Such termination shall be effective January 1 of any calendar year only if the ~~Commission~~ Division finds that there were no 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said

employer employed four or more individuals in employment, not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week. In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final."

**SECTION 2.11.** G.S. 96-12 reads as rewritten:

**"§ 96-12. Benefits.**

(a) Payment of Benefits. – Twenty-four months after the date when contributions first accrue under this Chapter benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with ~~such regulations as the Commission may prescribe~~ rules adopted by the Division.

(b) (1) a. Repealed by Session Laws 1977, c. 727, s. 52.

b. An individual who is totally unemployed shall be paid the individual's weekly benefit amount. The weekly benefit amount for an individual is the amount of the high-quarter wages paid to the individual in the individual's base period, divided by 26 and, if the quotient is not a whole dollar, rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits.

c. Repealed by Session Laws 1981, c. 160, s. 17.

(2) Each August 1, the ~~Commission~~ Division shall calculate the maximum weekly benefit amount available to an individual. The maximum weekly benefit amount is sixty-six and two-thirds percent (66 2/3%) of the average weekly insured wage rounded, if the amount is not a whole dollar, to the next lower whole dollar. The maximum weekly benefit amount set on August 1 of a year applies to an individual whose benefit year begins on or after that date and before August 1 of the following year.

...

(d) Duration of Benefits. – The total benefits paid to an individual shall not be less than the minimum total benefit and shall not exceed the lesser of the maximum total benefit or the individual's total benefit amount. The total benefit amount for an individual is determined by dividing the individual's base-period wages by the individual's high-quarter wages, multiplying that quotient by eight and two thirds, rounding the result to the nearest whole number, and then multiplying the resulting amount by the individual's weekly benefit amount. The minimum total benefit for an individual is 13 times the individual's weekly benefit amount. The maximum total benefit for an individual is 26 times the individual's weekly benefit amount, unless the benefits are extended further in accordance with G.S. 96-12.01. The ~~Commission~~ Division shall establish and maintain individual wage record accounts for each individual who earns wages in covered employment for as long as the wages would be included in a determination of benefits.

...

(g) Income Tax Withholding. – When an individual files a new claim for unemployment compensation, the individual shall be advised in writing at the time of filing that:

- (1) Unemployment compensation is subject to federal and State individual income tax.
- (2) Requirements exist pertaining to estimated tax payments.
- (3) The individual may elect to have federal individual income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in section 3402 of the Internal Revenue Code.
- (4) The individual may elect to have State individual income tax deducted and withheld from the individual's payment of unemployment compensation in an amount determined by the individual.

(5) The individual may change a previously elected withholding status.

The ~~Commission-Division~~ shall follow the procedures specified by the United States Department of Labor, the Internal Revenue Service, and the Department of Revenue pertaining to the deducting and withholding of individual income tax. The amounts deducted and withheld from unemployment compensation shall remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. If two or more deductions are made from an individual's unemployment compensation payment, then the deductions will be deducted and withheld in accordance with priorities established by the ~~Commission-Division~~."

**SECTION 2.12.** G.S. 96-12.01 reads as rewritten:

**"§ 96-12.01. Extended benefits.**

...  
(a1) Definitions. – As used in this section, unless the context clearly requires otherwise .

...  
(4) There is an "on indicator" for this State for a week if the ~~Commission Division~~ determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

...  
(5) There is an "off indicator" for this State for a week if the ~~Commission Division~~ determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

- a. Was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and was less than six percent (6%), or
- b. Was less than five percent (5%).

(6) "Rate of insured unemployment," for the purposes of subparagraphs (4) and (5) of this subsection, means the percentage derived by dividing

- a. The average weekly number of individuals filing claims for regular compensation in this State for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the ~~Commission-Division~~, on the basis of its reports to the United States Secretary of Labor, by
- b. The average monthly employment covered under this Chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

...  
(b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for Payment of, Extended Benefits. – Except when the result would be inconsistent with the other provisions of this section and in matters of eligibility determination, as provided ~~in the regulations of~~ by rules adopted by the ~~Commission, Division~~, the provisions of this Chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility Requirements for Extended Benefits. – An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the ~~Commission-Division~~ finds that with respect to such week:

- (1) ~~He~~ The individual is an "exhaustee" as defined in subsection (a)(10).
- (2) ~~He~~ The individual has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. Provided, however, that for purposes of disqualification for extended benefits for weeks of unemployment beginning after March 31, 1981, the term "suitable work" means any work which is within the individual's capabilities to perform if: (i) The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(C)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and (ii) the gross wages payable for the work equal the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended (without regard to any exemption), or the State minimum wage; and (iii) the work is offered to the individual in writing and is listed with the State employment service; and (iv) the considerations contained in G.S. 96-14(3) for determining whether or not work is suitable are applied to the extent that they are not inconsistent with the specific requirements of this subdivision; and (v) the individual cannot furnish evidence satisfactory to the ~~Commission~~ Division that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good, but if the individual submits evidence which the ~~Commission~~ Division deems satisfactory for this purpose, the determination of whether or not work is suitable with respect to such individual shall be made in accordance with G.S. 96-14(3) without regard to the definition contained in this subdivision. Provided, further, that no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth in this subdivision, but the employment service shall refer any individual claiming extended benefits to any work which is deemed suitable hereunder. Provided, further, that any individual who has been disqualified for voluntarily leaving employment, being discharged for misconduct or substantial fault, or refusing suitable work under G.S. 96-14 and who has had the disqualification terminated, shall have such disqualification reinstated when claiming extended benefits unless the termination of the disqualification was based upon employment subsequent to the date of the disqualification.
- (3) After March 31, 1981, he has not failed either to apply for or to accept an offer of suitable work, as defined in G.S. 96-12.01(c)(2), to which he was referred by an employment office of the ~~Commission~~ Division, and he has furnished the ~~Commission~~ Division with tangible evidence that he has actively engaged in a systematic and sustained effort to find work. If an individual is found to be ineligible hereunder, he shall be ineligible beginning with the week in which he either failed to apply for or to accept the offer of suitable work or failed to furnish the ~~Commission~~ Division with tangible evidence that he has actively engaged in a systematic and sustained effort to find work and such individual shall continue to be ineligible for extended benefits until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times his weekly benefit amount.

...

- (f) Beginning and Termination of Extended Benefit Period. –
  - (1) Whenever an extended benefit period is to become effective in this State as a result of an "on" indicator, or an extended benefit period is to be terminated in this State as a result of an "off" indicator, the ~~Commission~~ Division shall make an appropriate public announcement; and
  - (2) Computations required by the provisions of subsection (a)(6) shall be made by the ~~Commission~~, Division, in accordance with regulations prescribed by the United States Secretary of Labor.

...."

**SECTION 2.13.** G.S. 96-12.1 reads as rewritten:

**"§ 96-12.1. Extended base period for certain job related injuries.**

If an individual lacks sufficient base period wages because of a job related injury for which he received workers' compensation, upon written application by the claimant, an extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim. "Extended base period" means the four quarters prior to the claimant's base period. These four quarters may be substituted for base period quarters on a quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been used to establish a prior claim, except any wages earned that would render the ~~Employment Security Commission of North Carolina~~ Division of Employment Security out of compliance with applicable federal law will be excluded if used in a prior claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be noncharged."

**SECTION 2.14.** G.S. 96-13 reads as rewritten:

**"§ 96-13. Benefit eligibility conditions.**

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the ~~Commission~~ Division finds that -

- (1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the ~~Commission in accordance with such regulations as the Commission may prescribe~~; Division pursuant to rules adopted by the Division.

...

- (3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by ~~Commission regulations~~, Division rules, no individual shall be deemed available for work unless he establishes to the satisfaction of the ~~Commission~~ Division that ~~he~~ the individual is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the ~~Commission~~ Division that ~~such~~ the individual is actively seeking employment which ~~such~~ the individual is ~~qualified~~ able to perform ~~by past experience or training~~ during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the ~~Commission~~ Division finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for



work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the ~~Commission, Division~~ in accordance with ~~regulations adopted by the Commission, rules adopted by the Division~~, each claimant that tests positive for a controlled substance under this subdivision. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school. For the purposes of this subdivision:

- a. No individual shall be deemed to be available for work during any week that the person is incarcerated or has received notice to report or is otherwise detained in any state or federal jail or penal institution. This does not apply to any person incarcerated solely on a weekend in county jail and is otherwise available for work.
- b. An individual is exempted for any week that the individual participates in the Trade Jobs For Success initiative under G.S. 143B-438.16.

...

(c) Beginning February 16, 1977, an unemployed individual shall be eligible to receive benefits with respect to any week only if the ~~Commission-Division~~ finds that he has been totally, partially, or part-totally unemployed for a waiting period of one week with respect to each benefit year. No week shall be counted as a week of unemployment for waiting-period credit under this provision unless the claimant except for the provisions of this subdivision was otherwise eligible for benefits. As to claims filed on or after September 5, 1999, the waiting period for a benefit year shall not be required of any claimant if all of the following conditions are met:

- ...
- (4) The claimant files for a waiver of the waiting period week within 30 days after the date of notification or mailing of the notice of the right to have the waiting period week waived. The ~~Employment Security Commission, Division~~, for good cause shown, may at any time in its discretion, with or without motion or notice, order the period enlarged if the request for an enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order. After expiration of the specified period, the ~~Employment Security Commission-Division~~ may permit the act to be done where the failure to act was a result of excusable neglect.

The benefits paid as a result of the waiver of the waiting period week shall not be charged to the account or accounts of the base period employer or employers in accordance with G.S. 96-9(c)(2)d. The ~~Employment Security Commission-Division~~ shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(c1) As to claims filed on or after January 29, 2003, the waiting period for a benefit year shall not be required of a claimant if all of the following conditions are met:

- ...
- (3) The Governor has issued an Executive Order directing and authorizing the ~~Employment Security Commission-Division~~ to waive the waiting week for employees of the manufacturer.

- (4) The ~~Employment Security Commission~~ Division shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(d) Benefit entitlement based on services for governmental entities that become subject to ~~the Employment Security Commission law~~ 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.

...

(g) (1) Except as herein provided, no individual shall be eligible for benefits for any week during any part of which the ~~Commission~~ Division finds that work was not available to the individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work but such acts or omissions need not alone be disqualifying under G.S. 96-14.

...."

**SECTION 2.15.** G.S. 96-14 reads as rewritten:

**"§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

- (1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the ~~Commission~~ Division that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work.

...

- (1e) For the duration of an individual's unemployment, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits, if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff, or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer.

...

- (2) For the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with the work. Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. ~~conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.~~

"Discharge for misconduct with the work" as used in this section is defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer; being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs; any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; refusing

to perform reasonably assigned work tasks; and the failure to adequately perform any other employment duties as evidenced by no fewer than three written reprimands received in the 12 months immediately preceding the employee's termination. This phrase does not discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for ~~acts or omissions~~ any act or omission of the veteran that the ~~Commission~~ Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service.

- (2a) For a period of not less than four nor more than 13 weeks beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct. Substantial fault is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failures to perform work because of insufficient skill, ability, or equipment. Upon a finding of discharge under this subsection, the individual shall be disqualified for a period of nine weeks unless, based on findings by the ~~Commission~~ Division of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the ~~Commission~~ Division shall not be disturbed by a reviewing court except upon a finding of plain error.
- (2b) For the duration of the individual's unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to the individual, or the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision.
- (2c) Discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the ~~Commission~~ Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service, shall

not disqualify the veteran from receiving benefits under the substantial fault provisions of subdivision (2a) of this section for any period of time.

- (3) For the duration of his unemployment beginning with the first day of the first week in which the disqualifying act occurs if it is determined by the ~~Commission~~ Division that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the ~~Commission~~; Division; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the ~~Commission~~—Division. Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the ~~Commission~~—Division for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the ~~Commission~~ Division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
  - b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
  - c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
  - d. If the position offered is full-time work and the individual meets the part-time worker requirements of G.S. 96-13(a)(6).
- (4) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that:
- a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the ~~Commission~~; Division;
  - b. Such individual has discontinued his training course without good cause; or
  - c. If the individual is separated from his training course or vocational school due to misconduct.
- (5) For any week with respect to which the ~~Commission~~—Division finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place within this State which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials

or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

- (6) If the ~~Commission~~ Division finds he is customarily self-employed and can reasonably return to self-employment.
- (6a) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that the individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale:
  - a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;
  - b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner; or
  - c. The employing entity was a proprietorship, and the individual was a proprietor.

...

- (8) For any week with respect to which he has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on such a pro rata basis as the ~~Commission~~ Division may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-12, the claimant shall be entitled to receive such reduced payment if the claimant was otherwise eligible.

Further provided, any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment of benefits and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly (or within 5 days) to the ~~Commission~~ Division by the employer for application against the overpayment. Provided, however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year in which the overpayment is transmitted to the ~~Commission~~ Division, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the ~~Commission~~ Division or the failure of an employer to deduct an overpayment shall be subject to the same procedures for collection as is provided for contributions by G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection of overpayments of U. I. benefits, and it shall be construed accordingly.

- ...
- (10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent disqualification removed if he meets the following three conditions:
- a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;
  - b. Subsequently becomes unemployed through no fault of his own; and
  - c. Meets the availability requirements of the law.

Any time certain disqualification imposed by the provisions of subsections (1), (1D), and (2A) shall be removed by serving the disqualification imposed as provided by this subsection.

Provided for good cause shown the ~~Commission~~Division in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

Provided further, any permanent disqualification pursuant to the provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the effective date of the beginning of said disqualification.

- ...
- (12) Notwithstanding any other provision of this Chapter, no otherwise eligible individual shall be denied benefits for any weeks if it is determined by the ~~Commission~~Division that such individual is, at the time such claim is filed, unemployed because he left work solely as a result of a lack of work caused by the bankruptcy of his employer."

**SECTION 2.16.** G.S. 96-15 reads as rewritten:

**"§ 96-15. Claims for benefits.**

(a) Filing. – Claims for benefits shall be made in accordance with such regulations as the ~~Commission~~Division may prescribe. Employers may file claims for employees through the use of automation in the case of partial unemployment. Each employing unit shall post and maintain in places readily accessible to individuals performing services for it printed statements, concerning benefit rights, claims for benefits, and such other matters relating to the administration of this Chapter as the ~~Commission~~Division may direct. Each employing unit shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the ~~Commission~~Division may direct. Such printed statements and other materials shall be supplied by the ~~Commission~~Division to each employing unit without cost to the employing unit.

- (b) (1) Initial Determination. – A representative designated by the ~~Commission~~Division shall promptly examine the claim and shall determine whether or not the claim is valid. If the claim is determined to be not valid for any reason other than lack of base period earnings, the claim shall be referred to an Adjudicator for a decision as to the issues presented. If the claim is determined to be valid, a monetary determination shall be issued showing the week with respect to when benefits shall commence, the weekly benefit amount payable, and the potential maximum duration thereof. The claimant shall be furnished a copy of such monetary determination showing the amount of wages paid him by each employer during his base period and the employers by whom such wages were paid, his benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to him for

unemployment during the benefit year. When a claim is not valid due to lack of earnings in his base period, the determination shall so designate. The claimant shall be allowed 10 days from the earlier of mailing or delivery of his monetary determination to him within which to protest his monetary determination and upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall be referred to the ~~Chief Deputy Commissioner~~ Assistant Secretary or his designee for a decision as to the issues presented. All base period employers, as well as the most recent employer of a claimant on a temporary layoff, shall be notified upon the filing of a claim which establishes a benefit year.

At any time within one year from the date of the making of an initial determination, the ~~Commission~~ Division on its own initiative may reconsider such determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.

- (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 under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, 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 ~~Commission~~ Division unless within ~~45~~ 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to ~~such regulations as the Commission may adopt. The Commission~~ 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 ~~40~~ 30 days from the earlier of mailing or delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. 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. Provided further, no question or issue may be raised or presented by the ~~Commission~~ Division as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, 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.



(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable ~~regulations established rules~~ adopted by the ~~Commission~~ ~~Division~~. The ~~regulations rules~~ need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the ~~Commission~~ ~~Division~~ prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the ~~Commission~~ ~~Division~~ by ~~regulation rule~~ shall provide. The hearing shall be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant. The appeals referee or hearing officer 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 or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. 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~~ ~~Division~~ unless within 10 days after the date of notification or mailing of the decision, whichever is earlier a written appeal is filed pursuant to such ~~regulations rules~~ as the ~~Commission~~ ~~Board of Review and the Division~~ may adopt. No person may be appointed as an appeals referee or hearing officer unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the ~~Commission~~ ~~Division~~ as a hearing officer under ~~G.S. 96-4(m)~~ G.S. 96-4(q). No appeals referee or hearing officer in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals ~~referee~~; ~~referee or hearing officer~~; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the appeals ~~referee~~; ~~referee or hearing officer~~; the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the ~~Commission~~ ~~Board of Review~~ may dismiss the appeal.

(c1) Unless required for disposition of an ex parte matter authorized by law, a ~~Commissioner~~; ~~the Division~~, appeals referee, or employee assigned to make a decision or to make findings of facts and conclusions of law in a case shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for parties to participate.

(c2) Whenever a party is notified of an ~~Adjudicator's~~, ~~Appeals Referee's~~, or ~~Deputy Commissioner's~~ the Board of Review's or a hearing officer's decision by mail, G.S. 1A-1, Rule 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

(d) Repealed by Session Laws 1977, c. 727, s. 54.

(d1) No continuance shall be granted except upon application to the ~~Commissioner~~; ~~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 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.

(e) Review by the ~~Commission~~ ~~Board of Review~~. – The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeals referee, hearing officer, or other employee assigned to make a decision 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 Board of Review finds appropriate. The Board of Review may remove itself or transfer to an appeals referee, hearing officer, or other employee assigned to make a decision the proceedings on any claim pending before an appeals referee, hearing officer, or other employee assigned to make a decision. Interested parties shall be promptly notified of the findings and decision of the Board of Review. 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) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with ~~regulations prescribed by the Commission~~ rules adopted by the Division for determining the rights of the parties, whether or not such regulations conform to common-law or statutory rules of evidence and other technical rules of procedure. All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless ~~the recording is waived by all interested parties, the parties have waived the evidentiary hearing and entered into a stipulation resolving the issues pending before the appeals referee, hearing officer, or other employee assigned to make the decision,~~ but need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such ~~regulations as the Commission may prescribe, rules as the Division may adopt,~~ to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the ~~Commission~~ Division such reasonable fee for the transcript as the ~~Commission~~ Division may by regulation provide. The fee so prescribed by the ~~Commission~~ Division for a party shall not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars (\$65.00) per transcript. The ~~Commission~~ Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the ~~Commission~~ Division shall waive the fee.

(g) Witness Fees. – Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the ~~Commission~~ Division. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Chapter.

(h) Judicial Review. – Any decision of the ~~Commission~~ 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 final 30 days after the date of notification or mailing thereof, whichever is earlier. Judicial review shall be permitted only after a party claiming to be aggrieved by the decision has exhausted his remedies before the ~~Commission~~ Division as provided in this Chapter and has filed a petition for review in the superior court of the county in which he resides or has his principal place of business. The petition for review shall explicitly state what exceptions are taken to the decision or procedure of the ~~Commission~~ Division and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner shall serve copies of the petition by personal service or by certified mail, return receipt requested, upon the ~~Commission~~ Division and upon all parties of record to the

~~Commission-Division~~ proceedings. Names and addresses of the parties shall be furnished to the petitioner by the ~~Commission-Division~~ upon request. The ~~Commission-Division~~ shall be deemed to be 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. ~~Upon motion of the Commission, the court shall dismiss any review for which the petition is untimely filed, untimely or improperly served, or for which it otherwise fails to comply with the requirements of this subsection. 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 ~~Commission-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 ~~Commission-Division~~ shall 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 additional cost as is occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(i) Review Proceedings. – If a timely petition for review has been filed and served as provided in G.S. 96-15(h), the court may make party defendant any other party it deems necessary or proper to a just and fair determination of the case. The ~~Commission-Division~~ may, in its discretion, certify to the reviewing court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of fact by the ~~Commission-Division~~, if there is any competent evidence to support them and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all civil cases. An appeal may be taken from the judgment of the superior court, as provided in civil cases. The ~~Commission-Division~~ shall have the right to appeal to the appellate division from a decision or judgment of the superior court and for such purpose shall be deemed to be an aggrieved party. No bond shall be required of the ~~Commission-Division~~ upon appeal. Upon the final determination of the case or proceeding, the ~~Commission-Division~~ shall enter an order in accordance with the determination. When an appeal has been entered to any judgment, order, or decision of the court below, no benefits shall be paid pending a final determination of the cause, except in those cases in which the final decision of the ~~Commission-Division~~ allowed benefits.

(j) Repealed by Session Laws 1985, c. 197, s. 9.

(k) Irrespective of any other provision of this Chapter, the ~~Commission-Division~~ may adopt minimum regulations necessary to provide for the payment of benefits to individuals promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42 U.S.C.A., section 503(a)(1))."

**SECTION 2.17.** G.S. 96-16 reads as rewritten:

**"§ 96-16. Seasonal pursuits.**

(a) A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year. No pursuit shall be deemed seasonal unless and until so found by the ~~Commission-Provided, however, Division; except~~ that from March 27, 1953, any successor under G.S. 96-8(5)b to a seasonal pursuit shall be deemed seasonal unless such successor shall within 120 days after the acquisition request cancellation of the determination of status of such

seasonal pursuit; provided further that this provision shall not be applicable to pending cases nor retroactive in effect.

(b) Upon application therefor by a pursuit, the ~~Commission~~-Division shall determine or redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods thereof. The ~~Commission~~-Division may, on its own motion, redetermine the active period or periods of a seasonal pursuit. An application for a seasonal determination must be made on forms prescribed by the ~~Commission~~-Division and must be made at least 20 days prior to the beginning date of the period of production operations for which a determination is requested.

(c) Whenever the ~~Commission~~-Division has determined or redetermined a pursuit to be seasonal, such pursuit shall be notified immediately, and such notice shall contain the beginning and ending dates of the pursuit's active period or periods. Such pursuits shall display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. Such notices shall be furnished by the ~~Commission~~-Division.

...  
(j) As used in this section:

...  
(5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its active period or periods. The ~~Commission~~-Division may prescribe by regulation the manner in which seasonal wages shall be reported.

...."

**SECTION 2.18.** G.S. 96-17 reads as rewritten:

**"§ 96-17. Protection of rights and benefits; attorney representation; prohibited fees; deductions for child support obligations.**

...  
(b) Representation. – Any claimant or employer who is a party to any proceeding before the ~~Commission~~-Division may be represented by (i) an attorney; or (ii) any person who is supervised by an attorney, however, the attorney need not be present at any proceeding before the ~~Commission~~-Division.

(b1) Fees Prohibited. – Except as otherwise provided in this Chapter, no individual claiming benefits in any administrative proceeding under this Chapter shall be charged fees of any kind by the ~~Commission~~-Division or its representative, and in any court proceeding under this Chapter each party shall bear its own costs and legal fees.

...  
(d) (1) Definitions. – For the purpose of this subsection and when used herein:

a. "Unemployment compensation" means any compensation found by the ~~Commission~~-Division to be payable to an unemployed individual under the Employment Security Law of North Carolina (including amounts payable by the ~~Commission~~-Division pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment) provided, that nothing in this subsection shall be construed to limit the ~~Commission's~~ Division's ability to reduce or withhold benefits, otherwise payable, under authority granted elsewhere in this Chapter including but not limited to reductions for wages or earnings while unemployed and for the recovery of previous overpayments of benefits.

...  
(2) a. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether the individual owes child support obligations, as defined under subparagraph (1)b.

of this subsection. If any such individual discloses that he or she owes child support obligations and is determined by the ~~Commission~~ Division to be eligible for payment of unemployment compensation, the ~~Commission~~ Division shall notify the State or local child support enforcement agency enforcing such obligation that such individual has been determined to be eligible for payment of unemployment compensation.

- b. Upon payment by the State or local child support enforcement agency of the processing fee provided for in paragraph (4) of this subsection and beginning with any payment of unemployment compensation that, except for the provisions of this subsection, would be made to the individual during the then current benefit year and more than five working days after the receipt of the processing fee by the ~~Commission~~ Division, the ~~Commission~~ Division shall deduct and withhold from any unemployment compensation otherwise payable to an individual who owes child support obligations:
  1. The amount specified by the individual to the ~~Commission~~ Division to be deducted and withheld under this paragraph if neither subparagraph 2. nor subparagraph 3. of this paragraph is applicable; or
  2. The amount, if any, determined pursuant to an agreement submitted to the ~~Commission~~ Division under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency, unless subparagraph 3. of this paragraph is applicable; or
  3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in section 462(e) of the Social Security Act.
- c. Any amount deducted and withheld under paragraph b. of this subdivision shall be paid by the ~~Employment Security Commission~~ Division to the appropriate State or local child support enforcement agency.
- d. The Department of Health and Human Services and the ~~Commission~~ Division are hereby authorized to enter into one or more agreements which may provide for the payment to the ~~Commission~~ Division of the processing fees referred to in subparagraph b. and the payment to the Department of Health and Human Services of unemployment compensation benefits withheld, referred to in subparagraph c., on an open account basis. Where such an agreement has been entered into, the processing fee shall be deemed to have been made and received (for the purposes of fixing the date on which the ~~Commission~~ Division will begin withholding unemployment compensation benefits) on the date a written authorization from the Department of Health and Human Services to charge its account is received by the ~~Commission~~ Division. Such an authorization shall apply to all processing fees then or thereafter (within the then current benefit year) chargeable with respect to any individual name in the authorization. Any agreement shall provide for the reimbursement to the ~~Commission~~ Division of any start-up costs and the cost of

providing notice to the Department of Health and Human Services of any disclosure required by subparagraph a. Such an agreement may dispense with the notice requirements of subparagraph a. by providing for a suitable substitute procedure, reasonably calculated to discover those persons owing child support obligations who are eligible for unemployment compensation payments.

- ...
- (4) a. On or before April 1 of 1983 and each calendar year thereafter, the ~~Commission~~Division shall set and forward to the Secretary of Health and Human Services for use in the next fiscal year, a schedule of processing fees for the withholding and payment of unemployment compensation as provided for in this subsection, which fees shall reflect its best estimate of the administrative cost to the ~~Commission~~Division generated thereby.
- b. At least 20 days prior to September 25, 1982, the ~~Commission~~Division shall set and forward to the Secretary of Health and Human Services an interim schedule of fees which will be in effect until July 1, 1983.
- c. The provisions of this subsection apply only if arrangements are made for reimbursement by the State or local child support agency for all administrative costs incurred by the ~~Commission~~Division under this subsection attributable to child support obligations enforced by the agency."

**SECTION 2.19.** G.S. 96-18 reads as rewritten:

**"§ 96-18. Penalties.**

...

(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The ~~Commission~~Division has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

- (1) Any employing units employing more than 10 employees.
- (2) A contribution of more than two thousand dollars (\$2,000) has not been paid.
- (3) An experience rating account balance is more than five thousand dollars (\$5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the ~~Commission~~-Division finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars (\$500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

- ...
- (g) (1) Any person who, under subsection (e) above, has been held ineligible for benefits and who, because of those same acts or omissions has received any sum as benefits under this Chapter to which ~~he~~-the person was not entitled, shall be liable to repay any such sum to the ~~Commission~~-Division as provided in subparagraph (3) below, provided no such recovery or recoupment of such sum may be initiated after 10 years from the last day of the year in which the overpayment occurred.
- (2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which he was not entitled for any reason (including errors on the part of any representative of the ~~Commission~~-Division) other than subparagraph (1) above shall be liable to repay such sum to the ~~Commission~~-Division as provided in subparagraph (3) below, provided no such recovery or recoupment of such sum may be initiated after three years from the last day of the year in which the overpayment occurred.
- (3) The ~~Commission~~-Division may collect the overpayments provided for in this subsection by one or more of the following procedures as the ~~Commission~~-Division may, except as provided herein, in its sole discretion choose:
- a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the ~~Commission~~-Division, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments 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.
  - b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for same, and after due notice and reasonable opportunity for hearing (if a hearing on the merits of the claim has not already been had) the ~~Commission~~-Division, under the hand of ~~its Chairman~~, the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the ~~Commission~~-Division has reason to believe such claimant has property located; such certificate and/or copies thereof so 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 claimant may own in said county, with the same force and effect

as a judgment rendered by the superior court. The ~~Commission~~ 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 ~~Commission, Division,~~ and when so forwarded and in the hands of such sheriff or agent of the ~~Commission, Division,~~ shall have all the force and effect of an execution issued to such sheriff or agent of the ~~Commission-Division~~ by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. The ~~Commission-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 a duly authorized agent of the ~~Commission-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 ~~Commission, Division,~~ such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the ~~Commission-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 ~~Commission, 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 ~~Commission-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 ~~Commission, Division,~~ together with all moneys collected thereunder, and when such order, execution or alias is referred to the agent of the ~~Commission-Division~~ for service, the said agent of the ~~Commission-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 ~~Commission~~ Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the ~~Commission-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 execution. If any sheriff of this State or any agent of the ~~Commission~~ 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 ~~Commission-Division~~ and within the time provided by law, the official bond of such sheriff or of such agent of the ~~Commission-Division~~ shall be liable for the overpayments and costs due by the claimant. Additionally, the ~~Commission-Division~~ or its designated representatives in the collection of overpayments shall have the powers enumerated in G.S. 96-10(b)(2) and (3).

- c. Any person who has been found by the ~~Commission-Division~~ to have been overpaid under subparagraph (1) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter.



- d. Any person who has been found by the ~~Commission~~ Division to have been overpaid under subparagraph (2) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter in such amounts as the ~~Commission~~ Division may by regulation prescribe but no such benefit payable for any week shall be reduced by more than fifty percent (50%) of that person's weekly benefit amount.
- e. To the extent permissible under the laws and Constitution of the United States, the ~~Commission~~ Division is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby: (1) Overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other state shall be recovered by offset from unemployment benefits otherwise payable under this Chapter; and, (2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Chapter or any such federal program, or under the unemployment compensation law of another state or any such federal unemployment benefit or allowance program administered by such other state under an agreement with the United States Secretary of Labor if such other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the federal Social Security Act, if the United States agrees, as provided in the reciprocal agreement with this State entered into under such Section 303(g)(2) of the Social Security Act, that overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above, and overpayment as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other state under an agreement with the United States Secretary of Labor.
- f. The ~~Commission~~ Division may in its discretion decline to collect overpayments to claimants if the claimant has deceased after the payment was made. In such a case the ~~Commission~~ Division may remove the debt of the deceased claimant from its records."

**SECTION 2.20.** G.S. 96-19 reads as rewritten:

**"§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or invalidation of federal acts; suspension of enforcement provisions contested.**

(a) It is the purpose of this Chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to

credit on payment of federal taxes, of State contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the State that this Chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States Supreme Court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States Supreme Court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder. The enactment by the Congress of the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance Act shall in no way affect the administration of this law except as herein expressly provided.

All federal grants and all contributions theretofore collected, and all funds in the treasury by virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far as may be possible, under the terms of this Chapter: Provided, however, that contributions already due from any employer shall be collected and paid into the said fund, subject to such distribution; and provided further, that the personnel of the ~~State Employment Security Commission~~ Division of Employment Security shall be reduced as rapidly as possible.

The funds remaining available for use by the ~~North Carolina Employment Security Commission~~ Division of Employment Security shall be expended, as necessary, in making payment of all such awards as have been made and are fully approved at the date aforesaid, and the payment of the necessary costs for the further administration of this Chapter, and the final settlement of all affairs connected with same. After complete payment of all administrative costs and full payment of all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall be refunded to such employer, or his duly authorized assignee: Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the former Employment Security Commission of North Carolina, and that is now part of the Division of Employment Security of the North Carolina Department of Commerce, shall in such event return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the ~~Employment Security Commission of North Carolina, Division~~, the said State employment service shall render such service in connection therewith as shall be demanded or required under the provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

(b) The ~~Employment Security Commission~~ Division of Employment Security 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,~~ Division 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."

**SECTION 2.21.** G.S. 96-20 reads as rewritten:

**"§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director; employees.**

The ~~Employment Service Division of the Employment Security Commission~~ Employment Security Section of the Division of Employment Security, Department of Commerce, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Chapter, and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes," approved June 6, 1933, (48 Stat., 113; U.S.C., Title 29, section 49(c), as amended). The said Division shall be administered by a full-time salaried director. The ~~Employment Security Commission~~ Division shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this State, in conformity with section 4 of said act, and this State will observe and comply with the requirements thereof. The ~~Employment Security Commission~~ Division is hereby designated and constituted the agency of this State for the purpose of said act. The ~~Commission~~ Secretary is directed to appoint the ~~director,~~ head, other officers, and employees of the ~~Employment Service Division~~ Security Section."

**SECTION 2.22.** G.S. 96-21 reads as rewritten:

**"§ 96-21. Duties concerning veterans and worker profiling.**

The duties of the ~~Employment Service Division~~ Employment Security Section include the following:

- ...
- (2) To establish and use a worker profiling system that complies with 42 U.S.C. § 503(a)(10) to identify claimants for benefits whom the ~~Division~~ Section must refer to reemployment services in accordance with that law."

**SECTION 2.23.** G.S. 96-22 reads as rewritten:

**"§ 96-22. Employment of and assistance to minors.**

The ~~Employment Service Division~~ Security Section shall have jurisdiction over all matters contemplated in this Article pertaining to securing employment for all minors who avail themselves of the free employment service. The ~~Employment Service Division~~ Security Section shall have power to so conduct its affairs that at all times it shall be in harmony with laws relating to child labor and compulsory education; to aid in inducing minors over 16, who cannot or do not for various reasons attend day school, to undertake promising skilled employment; to aid in influencing minors who do not come within the purview of compulsory education laws, and who do not attend day school, to avail themselves of continuation or special courses in existing night schools, vocational schools, part-time schools, trade schools, business schools, library schools, university extension courses, etc., so as to become more skilled in such occupation or vocation to which they are respectively inclined or particularly adapted, including assisting those minors who are interested in securing vocational employment in agriculture and to aid in the development of good citizenship and in the study and development of vocational rehabilitation capabilities for handicapped minors."

**SECTION 2.24.** G.S. 96-24 reads as rewritten:

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

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

**SECTION 2.25.** G.S. 96-25 reads as rewritten:

**"§ 96-25. Acceptance and use of donations.**

It shall be lawful for the Employment ~~Service Division~~ Security Section to receive, accept, and use, in the name of the people of the State, or any community or municipal corporation, as the donor may designate, by gift or devise, any moneys, buildings, or real estate for the purpose of extending the benefits of this Article and for the purpose of giving assistance to handicapped citizens through vocational rehabilitation."

**SECTION 2.26.** G.S. 96-26 reads as rewritten:

**"§ 96-26. Cooperation of towns, townships, and counties with Division.**

It shall be lawful for the governing authorities of any municipality, county, township, or school corporation in the State to enter into cooperative agreement with the Employment ~~Service Division~~ Security Section and to appropriate and expend the necessary money upon such conditions as may be approved by the Employment ~~Service Division~~ Security Section and to permit the use of public property for the joint establishment and maintenance of such offices as may be mutually agreed upon, and which will further the purpose of this Article."

**SECTION 2.27.** G.S. 96-27 reads as rewritten:

**"§ 96-27. Method of handling employment service funds.**

All federal funds received by this State under the Wagner-Peyser Act (48 Stat. 113; Title 29, U.S.C., section 49) as amended, and all State funds appropriated or made available to the Employment ~~Service Division~~ Security Section shall be paid into the Employment Security Administration Fund, and said moneys are hereby made available to the State employment service to be expended as provided in this Article and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, ~~said Division~~ the Section is authorized to enter into agreements with any political subdivision of this State or with any private, nonprofit organization, and as a part of any such agreement the ~~Commission~~ Division may accept moneys, services, or quarters as a contribution to the Employment Security Administration Fund."

**SECTION 2.28.** G.S. 96-29 reads as rewritten:

**"§ 96-29. Openings listed by State agencies.**

Every State agency shall list with the ~~Employment Security Commission of North Carolina~~ Division of Employment Security every job opening occurring within the agency which opening the agency wishes filled and which will not be filled solely by promotion or transfer from within the existing State government work force. The listing shall include a brief description of the duties and salary range and shall be filed with the ~~Commission~~ Division within 30 days after the occurrence of the opening. The State agency may not fill the job opening for at least 21 days after the listing has been filed with the ~~Commission~~ Division. The listing agency shall report to the ~~Commission~~ Division the filling of any listed opening within 15 days after the opening has been filled.

The ~~Employment Security Commission~~ Division may act to waive the 21-day listing period for job openings in job classifications declared to be in short supply by the State Personnel Commission, upon the request of a State agency, if the 21-day listing requirement for these classifications hinders the agency in providing essential services."

**SECTION 2.29.** G.S. 96-31 reads as rewritten:

**"§ 96-31. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) "CFS" means the common follow-up information management system developed by DES ~~the Employment Security Commission of North Carolina as authorized under this Article.~~
- (2) ~~"ESC" means the Employment Security Commission of North Carolina.~~  
"DES" means the Division of Employment Security.
- (3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).
- (4) "State job training, education, and placement program" or "State-funded program" means a program operated by a State or local government agency or entity and supported in whole or in part by State or federal funds, that provides job training and education or job placement services to program participants. The term does not include on-the-job training provided to current employees of the agency or entity for the purposes of professional development."

**SECTION 2.30.** G.S. 96-32 reads as rewritten:

**"§ 96-32. Common follow-up information management system created.**

(a) The ~~Employment Security Commission of North Carolina~~ DES shall develop, implement, and maintain a common follow-up information management system for tracking the employment status of current and former participants in State job training, education, and placement programs. The system shall provide for the automated collection, organization, dissemination, and analysis of data obtained from State-funded programs that provide job training and education and job placement services to program participants. In developing the system, the ~~ESC~~ DES shall ensure that data and information collected from State agencies is confidential, not open for general public inspection, and maintained and disseminated in a manner that protects the identity of individual persons from general public disclosure.

(b) The ~~ESC~~ DES shall adopt procedures and guidelines for the development and implementation of the CFS authorized under this section.

(c) Based on data collected under the CFS, the ~~ESC~~ DES shall evaluate the effectiveness of job training, education, and placement programs to determine if specific program goals and objectives are attained, to determine placement and completion rates for each program, and to make recommendations regarding the continuation of State funding for programs evaluated."

**SECTION 2.31.** G.S. 96-33 reads as rewritten:

**"§ 96-33. State agencies required to provide information and data.**

(a) Every State agency and local government agency or entity that receives State or federal funds for the direct or indirect support of State job training, education, and placement programs shall provide to the ~~Employment Security Commission of North Carolina~~ DES all data and information available to or within the agency or entity's possession requested by the ~~ESC~~ DES for input into the common follow-up information management system authorized under this Article.

(b) Each agency or entity required to report information and data to the ~~ESC~~ DES under this Article shall maintain true and accurate records of the information and data requested by the ~~ESC~~ DES. The records shall be open to ~~ESC~~ DES inspection and copying at reasonable times and as often as necessary. Each agency or entity shall further provide, upon request by ~~ESC~~ DES, sworn or unsworn reports with respect to persons employed or trained by the agency or entity, as deemed necessary by the ~~ESC~~ DES to carry out the purposes of this Article. Information obtained by the ~~ESC~~ DES from the agency or entity shall be held by ~~ESC~~ DES as confidential and shall not be published or open to public inspection other than in a manner that protects the identity of individual persons and employers."

**SECTION 2.32.** G.S. 96-35 reads as rewritten:

**"§ 96-35. Reports on common follow-up system activities.**

(a) The ~~Employment Security Commission of North Carolina~~ DES shall present annually by May 1 to the General Assembly and to the Governor a report of CFS activities for the preceding calendar year. The report shall include information on and evaluation of job training, education, and placement programs for which data was reported by State and local agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year data.

(b) The ~~ESC~~ DES shall report to the Governor and to the General Assembly upon the convening of each biennial session, its evaluation of and recommendations regarding job training, education, and placement programs for which data was provided to the CFS."

**PART III. OTHER CONFORMING AMENDMENTS TO THE GENERAL STATUTES**

**SECTION 3.1.** G.S. 7A-343.1 reads as rewritten:

**"§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
<del>Employment Security Commission</del>	4
<u>Department of Commerce</u>	<u>1</u>
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2

Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1
Cherokee Supreme Court, Eastern Band of Cherokee Indians	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

**SECTION 3.2.** G.S. 8-45.3(a1) reads as rewritten:

"(a1) The ~~Employment Security Commission~~ Division of Employment Security is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of

the ~~Commission, Division~~, including filings required by law to be made to the ~~Commission, Division~~, and said photographs, photocopies, or microphotocopies, when certified by the ~~Commission-Division~~ as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings, and matters as the originals thereof would have been."

**SECTION 3.3.** G.S. 52C-5-501(a) reads as rewritten:

"(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. In the event that an obligor is receiving unemployment compensation benefits from ~~the North Carolina Employment Security Commission~~, the Division of Employment Security (DES) in accordance with G.S. 96-17, an income-withholding order issued in another state may be sent to the ~~Employment Security Commission-DES~~ without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the ~~Employment Security Commission-DES~~ shall:

- (1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;
- (2) Immediately provide a copy of the order to the obligor; and
- (3) Distribute the funds as directed in the withholding order. The ~~Employment Security Commission-DES~~ shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits."

**SECTION 3.4.** G.S. 58-89A-120 reads as rewritten:

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

A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and collection of unemployment insurance contributions or the assignment of discrete employer numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and 96-8(6). The ~~Employment Security Commission-Department of Commerce, Division of Employment Security (DES)~~, shall cooperate with the Commissioner in the investigation of applicants and licensees and shall provide the Commissioner with access to all relevant records and data in the custody of the ~~Employment Security Commission-DES~~."

**SECTION 3.5.** G.S. 84-5(a) reads as rewritten:

"(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the ~~Employment Security Commission, Department of Commerce, Division of Employment Security~~, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:



- (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
  - a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.
  - b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.
  - c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.
- (2) Except as provided in subsection (b) of this section, when any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:
  - a. Offering wills for probate.
  - b. Preparing and publishing notice of administration to creditors.
  - c. Handling formal court proceedings.
  - d. Drafting legal papers or giving legal advice to spouses concerning rights to an elective share under Article 1A of Chapter 30 of the General Statutes.
  - e. Resolving questions of domicile and residence of a decedent.
  - f. Handling proceedings involving year's allowances of widows and children.
  - g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
  - h. Drafting instruments releasing deeds of trust.
  - i. Drafting assignments of rent.
  - j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
  - k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
    1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
    2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
    3. Handling petitions to the tax court.
  - l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
  - m. In connection with the administration of an estate or trust:
    1. Making application for letters testamentary or letters of administration.

2. Abstracting or passing upon title to property.
  3. Handling litigation relating to claims by or against the estate or trust.
  4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.
- (3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:
- a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.
  - b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.
  - c. In matters involving estate and inheritance taxes and federal and State income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.
  - d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing."

**SECTION 3.6.** G.S. 95-25.3(d) reads as rewritten:

"(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving Work First Family Assistance or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the ~~Employment Security Commission~~ Division of Employment Security.

The regulation issued by the Commissioner shall not permit employment at the subminimum rate for a period in excess of 52 weeks."

**SECTION 3.7.** G.S. 94-144(b) reads as rewritten:

"(b) A listing of employment by area and industry of employers who have an assigned account number by the ~~Employment Security Commission~~ Department of Commerce, Division of Employment Security (DES), shall be supplied annually to the Commissioner by the ~~Employment Security Commission of this State~~ DES. The listing of employment by area and

industry shall contain at least the following: employer name; ~~Employment Security Commission-DES~~ account number; indication of whether multiple or a single report unit; number of reporting units; average employment; establishment size code; geographical area; any four-digit code; and any other information deemed necessary by the ~~Commissioner Division~~ to meet federal reporting requirements."

**SECTION 3.8.** G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area. For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential manufacturing process in which separate parts of the sequential manufacturing process are performed in different facilities within the same county, the term "location" may mean either the specific establishment or all facilities in the county in which parts of the process are performed.

Part-time jobs for which the taxpayer provides health insurance as provided in subsection (b2) of this section are considered to have an average weekly wage at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located. There may be a period of up to 100 days between the time at which an employee begins a part-time job and the time at which the taxpayer begins to provide health insurance for that employee.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one hundred ten percent (110%) of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the ~~Employment Security Commission-Division of Employment Security~~ for the most recent period for which data are available. The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

**SECTION 3.9.** G.S. 105-259(b)(9) and (9a) read as rewritten:

"(9) To furnish to the ~~Employment Security Commission-Division of Employment Security~~ the name, address, and account and identification numbers of a taxpayer when the information is requested by the ~~Commission~~

Division in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

- (9a) To furnish information to the ~~Employment Security Commission~~ Division of Employment Security to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The ~~Employment Security Commission~~ Division of Employment Security shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:
- a. Name, social security number, spouse's name, spouse's social security number, and county of residence.
  - b. Filing status and federal personal exemptions.
  - c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.
  - d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.
  - e. Exemption for children, nonresidents' and part-year residents' exemption for children, and credit for children.
  - f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses."

**SECTION 3.10.** G.S. 105A-8(b) reads as rewritten:

"(b) Hearing. – A hearing on a contested claim of a State agency, except a constituent institution of The University of North Carolina or the ~~Employment Security Commission~~ Division of Employment Security, must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the ~~Employment Security Commission~~ Division of Employment Security must be conducted in accordance with rules adopted by that ~~Commission~~ Division. A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the debtor. No part of the collection assistance fee retained by the Department may be returned when a debt is owed but it is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-241.21. A State agency that returns a refund to a taxpayer under this subsection must pay from the State agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

**SECTION 3.11.** G.S. 105A-9 reads as rewritten:

**"§ 105A-9. Appeals from hearings.**

Appeals from hearings allowed under this Chapter, other than those conducted by the ~~Employment Security Commission, Division of Employment Security~~, shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides. Appeals from hearings allowed under this Chapter that are conducted by the ~~Employment Security Commission of North Carolina, Division of Employment Security~~ shall be in accordance with the provisions of Chapter 96 of the General Statutes."

**SECTION 3.12.** G.S. 108A-29 reads as rewritten:

**"§ 108A-29. Priority for employment services.**

(a) Repealed by Session Laws 2009-489, s. 12, effective August 26, 2009.

(b) Individuals seeking to apply or reapply for Work First Program assistance and who are not exempt from work requirements shall register with the ~~Employment Security Commission, Division of Employment Security~~ for employment services. The point of registration shall be at an office of the ~~Employment Security Commission, Division~~ in the county in which the individual resides or at another location designated in a Memorandum of Understanding between the ~~Employment Security Commission, Division~~ and the local department of social services.

...

(f) Each county department of social services shall enter into a cooperative agreement with the local ~~Employment Security Commission, Division~~ to operate the Job Search component on behalf of Work First Program registrants. The cooperative agreement shall include a provision for payment to the ~~Employment Security Commission, Division~~ by the county department of social services for the cost of providing those services, not otherwise available to all clients of the ~~Employment Security Commission, Division~~, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant. The county department of social services may also enter into a cooperative agreement with the community college system or any other entity to operate the Job Preparedness component. This cooperative agreement shall include a provision for payment to that entity by the county department of social services for the cost of providing those services, not otherwise available to all clients of the ~~Employment Security Commission, Division~~, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant.

(g) The ~~Employment Security Commission, Division~~ shall further assist registrants through job search, job placement, or referral to community service, if contracted to do so.

(h) An individual placed in the Job Search component of the ~~Employment Security Commission, Division~~ or other agency providing Job Search services shall look for work and shall accept any suitable employment. If contracted, the ~~Employment Security Commission, Division~~ shall refer individuals to current job openings and shall make job development contacts for individuals. Individuals so referred shall be required to keep a record of their job search activities on a job search record form provided by the ~~Commission, Division~~, and the ~~Employment Security Commission, Division~~ will monitor these activities. A "job search record" means a written list of dates, times, places, addresses, telephone numbers, names, and circumstances of job interviews. The Job Search component shall include at least one weekly contact with the ~~Employment Security Commission, Division~~. The ~~Employment Security Commission, Division~~ shall adopt rules to accomplish this subsection.

(i) The ~~Employment Security Commission, Division of Employment Security~~ shall notify all employers in the State of the "Exclusive No-Fault" Referral Service available through the ~~Employment Security Commission, Division of Employment Security~~ to employers who hire personnel through Job Service referrals.

(j) All individuals referred to jobs through the ~~Employment Security Commission~~ Division of Employment Security shall be instructed in the procedures for applying for the Federal Earned Income Credit (FEIC). All individuals referred to jobs through the ~~Employment Security Commission~~ Division who qualify for the FEIC shall apply for the FEIC by filing a W-5 form with their employers.

...  
(l) The ~~Employment Security Commission~~ Division of Employment Security shall work with the Department of Labor to develop a relationship with these private employment agencies to utilize their services and make referrals of individuals registered with the ~~Employment Security Commission~~ Division of Employment Security.

...  
(n) If after evaluation of an individual the ~~Employment Security Commission~~ Division of Employment Security believes it necessary, the ~~Employment Security Commission~~ Division or the county department of social services also may refer an individual to a Job Preparedness provider. The local community college should include General Education Development, Adult Basic Education, or Human Resources Development programs that are already in existence as a part of the Job Preparedness component. Additionally, the ~~Commission~~ Division or the county department of social services may refer an individual to a literacy council. Through a Memorandum of Understanding between the ~~Employment Security Commission~~ Division of Employment Security, the local department of social services, and other contracted entities, a system shall be established to monitor an individual's progress through close communications with the agencies assisting the individual. The ~~Employment Security Commission~~ Division of Employment Security or Job Preparedness provider shall adopt rules to accomplish this subsection.

...  
(p) The ~~Employment Security Commission~~ Division shall expand its Labor Market Information System. The expansion shall at least include: statistical information on unemployment rates and other labor trends by county; and publications dealing with licensing requirements, economic development, and career projections, and information technology systems which can be used to track participants through the employment and training process.

...."

**SECTION 3.13.** G.S. 110-129.2(g)(1) reads as rewritten:

"(g) Other Uses of Directory Information. – The following agencies may access information entered into the Directory from employer reports for the purposes stated:

(1) The ~~Employment Security Commission~~ Division of Employment Security for the purpose of administering employment security programs."

**SECTION 3.14.** G.S. 110-136.2 reads as rewritten:

**"§ 110-136.2. Use of unemployment compensation benefits for child support.**

...  
(b) Upon notification of a voluntary assignment by the Department of Health and Human Services, the ~~Employment Security Commission~~ Division of Employment Security shall deduct and withhold the amount assigned by the responsible parent as provided in G.S. 96-17.

(c) Any amount deducted and withheld shall be paid by the ~~Employment Security Commission~~ Division of Employment Security to the Department of Health and Human Services for distribution as required by federal law.

(d) Voluntary assignment of unemployment compensation benefits shall remain effective until the ~~Employment Security Commission~~ Division of Employment Security receives notification from the Department of Health and Human Services of an express written revocation by the responsible parent.

...

(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the ~~Employment Security Commission-Division~~ and payment shall be made by the ~~Employment Security Commission-Division~~ directly to the Department of Health and Human Services pursuant to G.S. 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human Services or to another state under G.S. 52C-5-501, the ~~Employment Security Commission-Division~~ is exempt from the provisions of G.S. 110-136.8."

**SECTION 3.15.** G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the ~~North Carolina Employment Security Commission-Division of Employment Security~~ on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes of purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and (6)a."

**SECTION 3.16.** G.S. 132-3(c) reads as rewritten:

"(c) Employment Security ~~Commission-Records~~. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the ~~Employment Security Commission-Division of Employment Security~~ has been copied in any manner, the original record may be destroyed upon the order of the ~~Chairman of the Employment Security Commission-Division~~. If a record of the ~~Commission-that Division~~ has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the ~~Chairman of the Employment Security Commission-Assistant Secretary of Commerce~~."

**SECTION 3.17.** G.S. 135-16 reads as rewritten:

**"§ 135-16. Employees transferred to North Carolina State Employment Service by act of Congress.**

Notwithstanding any provision contained in this Chapter, any employee of the United States Employment Service who was transferred to and became employed by the State of North Carolina, or any of its agencies, on November 16, 1946, by virtue of Public Laws 549, 79th Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower Commission or the United States Employment Service between January 1, 1942, and November 15, 1946, shall be deemed to have been engaged in membership service as defined by this Chapter for any payroll period or periods between such dates: Provided, that any such employee or member on or before January 1, 1948, pays to the Board of Trustees for the benefit of the proper fund or account an amount equal to the accumulated contributions, with interest thereon, that such employee or member would have made during such period if he had been a member of the Retirement System with earnable compensation based on the salary received for such period and as limited by this Chapter: Provided, further that funds are made available by the United States Employment Service, or other federal agency, to the ~~Employment Security Commission-Division of Employment Security~~ for the payment of and the ~~Employment Security Commission-Division of Employment Security~~ pays to the Board of Trustees for the benefit of the proper fund a sum equal to the employer's contributions that would have been paid for such period for members or employees who pay the accumulated contributions provided in this section.

The Board of Trustees is authorized to adopt and issue all necessary rules and regulations for the purpose of administering and enforcing the provisions of this section."

**SECTION 3.18.** G.S. 138A-24(14)c. reads as rewritten:

- "c. A covered person serving on, or a prospective appointee to, one of the following panels or boards:
1. Alcoholic Beverage Control Commission.
  2. Coastal Resources Commission.
  3. State Board of Education.
  4. State Board of Elections.
  5. ~~Employment Security Commission~~Division of Employment Security.
  6. Environmental Management Commission.
  7. Industrial Commission.
  8. State Personnel Commission.
  9. Rules Review Commission.
  10. Board of Transportation.
  11. Board of Governors of the University of North Carolina.
  12. Utilities Commission.
  13. Wildlife Resources Commission."

**SECTION 3.19.** G.S. 143B-181 reads as rewritten:

**"§ 143B-181. Governor's Advisory Council on Aging – members; selection; quorum; compensation.**

The Governor's Advisory Council on Aging of the Department of Health and Human Services shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the President Pro Tempore of the Senate, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the ~~Employment Security Commission~~Division of Employment Security; one representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Instruction; one representative of the Department of Environment and Natural Resources; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be persons 60 years of age or older. The Council shall meet at least quarterly.

Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.



The Governor shall designate one member of the Council as chair to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Health and Human Services."

**SECTION 3.20.** G.S. 143B-407(a) reads as rewritten:

"(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Health and Human Services, the ~~Director of the Employment Security Commission~~, Assistant Secretary of Commerce in charge of the Division of Employment Security; the Secretary of Administration, the Secretary of Environment and Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; the Sappony; the Occaneechi Band of the Saponi Nation of Alamance and Orange Counties, and the Native Americans located in Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Sappony, one; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native American Society, one. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122."

**SECTION 3.21.** G.S. 143B-417(1)bb. reads as rewritten:

"(1) To determine the number of student interns to be allocated to each of the following offices or departments:

...

bb. ~~Employment Security Commission~~Division of Employment Security

...."

**SECTION 3.22.** G.S. 143B-426.25(b)(7) reads as rewritten:

"(b) The North Carolina Farmworker Council shall consist of 13 members as follows:

...

(7) The ~~Chairman of the Employment Security Commission~~ Assistant Secretary of Commerce in charge of the Division of Employment Security or ~~his~~ that officer's designee shall serve ex officio.

...."

**SECTION 3.23.** G.S. 147-86.1 reads as rewritten:

**"§ 147-86.1. Pool account for local government unemployment compensation.**

(a) The State Treasurer is authorized to establish a pool account, in accordance with rules and regulations of the ~~Employment Security Commission~~, Division of Employment Security (DES), in cooperation with any one or more units of local government, for the purpose of reimbursing the ~~Employment Security Commission~~ DES for unemployment benefits paid by the ~~Commission~~ DES and chargeable to each local unit of government participating in the pool account. In the pool account established pursuant to this section, the funds contributed by a unit

of local government shall remain the funds of the particular unit, and interest or other investment income earned by the pool account shall be prorated and credited to the various contributing local units on the basis of the amounts thereof contributed, figured according to an average periodic balance or some other sound accounting principle.

(b) The State Treasurer shall pay to the ~~Employment Security Commission~~, Division of Employment Security, within 25 days from receipt of a list thereof, all unemployment benefits charged by the ~~Commission-DES~~ to each unit of local government participating in the pool account from the funds in the pool account belonging to each such unit, to the extent that said funds are sufficient to do so.

(c) Notwithstanding the participation by a unit of local government in the pool account authorized by this section, such unit shall remain liable to the ~~Employment Security Commission~~-Division of Employment Security for any benefits duly charged by the ~~Commission~~-Division to the unit which are not paid by the State Treasurer from funds in the pool account belonging to the unit. Notwithstanding its participation in the pool account, each unit of local government shall continue to maintain an individual account with the ~~Employment Security Commission-DES~~.

(d) The Director of the Budget shall be authorized to transfer from the interest earned on the pool account, to the State Treasurer's departmental budget, such funds as may be necessary to defray the Treasurer's cost of administering the pool account."

**SECTION 3.24.** G.S. 158-7.1(d2)(1) reads as rewritten:

"(d2) In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the county or city over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

- (1) The governing board of the county or city shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. A city that spans more than one county is considered to be located in the county where the greatest population of the city resides. For the purpose of this subdivision, the median average wage in a county is the median average wage for all insured industries in the county as computed by the ~~Employment Security Commission~~-Department of Commerce, Division of Employment Security, for the most recent period for which data is available."

**SECTION 3.25.** G.S. 165-10 reads as rewritten:

**"§ 165-10. Transfer of veterans' activities.**

The Governor may transfer to the Department such funds, facilities, properties and activities now being held or administered by the State for the benefit of veterans, their families and dependents, as he may deem proper; provided, that the provisions of this section shall not apply to the activities of the ~~North Carolina Employment Security Commission~~-Department of Commerce, Division of Employment Security, in respect to veterans."

#### **PART IV. REPORTING; OTHER MATTERS**

**SECTION 4.1.** By November 15, 2011, the Board of Review established by this act shall be appointed and the Department of Commerce shall assign staff to the Board.

**SECTION 4.2.** By June 30, 2012, the Secretary of the Department of Commerce shall make a detailed written report to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on the consolidation of the Employment Security Commission into the

Department of Commerce and on any changes the Secretary recommends to maintain the solvency of the Employment Security Fund.

**PART V. AUTHORITY OF THE REVISOR**

**SECTION 5.1.** Deletion of references. – The Revisor of Statutes may delete any reference in the General Statutes to the Employment Security Commission, or any derivative thereof, and substitute references to the Division of Employment Security (DES) of the Department of Commerce created by this act wherever conforming changes are necessary. The Revisor of Statutes may delete any reference in the General Statutes to the Chairman of the Employment Security Commission, or any derivative thereof, and substitute references to the Secretary of Commerce, as appropriate.

**PART VI. EFFECTIVE DATE**

**SECTION 6.1.** Except as otherwise provided, this act becomes effective November 1, 2011.

In the General Assembly read three times and ratified this the 17<sup>th</sup> day of June, 2011.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

VETO Beverly E. Perdue  
Governor

Became law notwithstanding the objections of the Governor, 3:55 p.m. this 26<sup>th</sup> day of July, 2011.

s/ Denise Weeks  
House Principal Clerk