# Chapter 96.

# Employment Security.

Article 1.

Definitions and Funds.

## § 96-1. Title and definitions.

(a) Title. – This Chapter shall be known and may be cited as the "Employment Security Law."

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

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

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

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

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

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

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

(7) Computation date. – August 1 of each year.

(8) Department. – The North Carolina Department of Commerce.

(9) Division. – The Department's Division of Employment Security.

(10) Employee. – Defined in section 3306 of the Code.

(11) Employer or employing unit. – Any of the following:

a. An employer as defined in section 3306 of the Code.

b. A State or local governmental unit required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

c. A nonprofit organization required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

d. An Indian tribe required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

(12) Employment. – Defined in section 3306 of the Code, with the following additions and exclusions:

a. Additions. – The term includes service to a governmental unit, a nonprofit organization, or an Indian tribe as described in sections 3306(c)(7) and 3306(c)(8) of the Code.

b. Exclusions. – The term excludes all of the following:

1. Service performed by an independent contractor.
2. Service performed for a governmental entity or nonprofit organization under sections 3309(b) and 3309(c) of the Code.
3. Service by one or more of the following individuals if the individual is authorized to exercise independent judgment and control over the performance of the work and is compensated solely by way of commission:
   A. A real estate broker, as defined in G.S. 93A-2.
   B. A securities salesman, as defined in G.S. 78A-2.
4. Service performed by a direct seller, as defined in section 3508(b)(2) of the Code. The term does not include a person defined in section 3508(b)(2)(A)(iii) of the Code.
5. Service performed by a nonresident employee for a nonresident business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this exclusion.

(13) Employment security law. – A law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits.

(14) Employment service company. – A person that contracts with a client or customer to supply an individual to perform employment services for the client or customer and that both under contract and in fact meets all of the following conditions:
   a. Negotiates with the client or customer on such matters as time, place, and type of work, working conditions, quality, and price of the employment services.
   b. Determines the assignment of an individual to the client or customer, even if the individual retains the right to refuse a specific assignment.
   c. Hires and terminates an individual supplied.
   d. Sets the rate of pay for the individual supplied.
   e. Pays the individual supplied.

(14a) Federal disaster declaration. – Declaration of a major natural disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, provided that the declaration allows disaster unemployment assistance under the federal act.

(15) Federal Unemployment Tax Act (FUTA). – Chapter 23 of the Code.

(16) Full-time student. – Defined in section 3306 of the Code.

(17) Governmental unit. – The term includes all of the following:
   a. The State, a county, or a municipality, or any department, agency, or other instrumentality of one of these entities.
   b. The State Board of Education, the Board of Trustees of The University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, a local board of education, or another entity that pays a teacher at a public school or educational institution.

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

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

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

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

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

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

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

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

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

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

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

(28) Wages. – Defined in section 3306 of the Code, except that no amount is excluded as provided under subdivision (b)(1) of that section. (Ex. Sess., 1936, c. 1, s. 1; 1947, c. 598, s. 1; 1977, c. 727, s. 1; 2011-401, s. 2.1; 2013-2, s. 1(b); 2013-224, s. 19; 2017-8, s. 1(a); 2018-94, s. 1(a); 2019-187, s. 1(d).)

**§§ 96-1.1 through 96-1.5. Repealed by Session Laws 1977, c. 727, ss. 2-6.**

**§ 96-2. Declaration of State public policy.**

As a guide to the interpretation and application of this Chapter, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the

compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. (Ex. Sess. 1936, c. 1, s. 2.)

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

The Division of Employment Security (DES) is created within the Department of Commerce and shall administer the provisions of this Chapter under the supervision of the Assistant Secretary of Commerce. (Ex. Sess. 1936, c. 1, s. 10; 1941, c. 108, s. 10; c. 279, ss. 1-3; 1943, c. 377, s. 15; 1947, c. 598, s. 1; 1953, c. 401, s. 1; 1957, c. 541, s. 5; 1965, c. 795, s. 1; 1977, c. 727, s. 7; 1979, c. 660, s. 1; 1981, c. 354; 1983, c. 717, s. 19; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 103, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 28.2(c); 1997-443, s. 33.3; 2005-276, ss. 29.20A(a), 29.20A(b); 2011-401, s. 2.2; 2015-238, s. 2.4(a).)

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

(a) Duties and Powers of the Secretary and Assistant Secretary. – It shall be the duty of the Secretary of the Department of Commerce to administer this 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) Repealed by Session Laws 2015-238, s. 3.3(a), effective September 10, 2015.

(c) Procedures. – The Secretary of the Department of Commerce shall determine 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 Assistant Secretary shall, except as otherwise provided by the Secretary, be vested with all authority of the Secretary under this Chapter, including the authority to conduct hearings and make decisions and determinations, and shall execute all orders, rules and regulations established by the Secretary. Not later than November 20 preceding the meeting of the General Assembly, the 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 Secretary deems proper. The report shall include a balance sheet of the monies 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 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 Secretary believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the Secretary shall promptly so inform the Governor and the legislature, and make recommendations with respect thereto.

(d) Rulemaking. – 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.

(e) Publication. – The Division shall cause to be printed for distribution to the public the text of this Chapter, the Division's rules, and any other material the 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.

(f) Personnel. – Subject to other provisions of this Chapter, the 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 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 Secretary of Commerce may delegate to any such person so appointed such power and authority as the Secretary deems reasonable and proper for the effective administration of this Chapter, and may, in his or her discretion, bond any person handling monies or signing checks hereunder.

(g) Repealed by Session Laws 2021-90, s. 12, effective July 22, 2021.

(h) Employment Stabilization. – The Secretary of Commerce, in consultation with the Assistant Secretary, 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.

(i) Records and Reports. –

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

(2) If the 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 Division finds incorrect or insufficient, the 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 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 a person 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 Division of Employment Security. Appeals from the decisions of the hearing officers or appeals referees shall be heard by the Board of Review.

(k) Oaths and Witnesses. – In the discharge of the duties imposed by this Chapter, the Assistant Secretary, the Chair of the Board of Review, and any duly authorized representative 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 Assistant Secretary, the Chair of the Board of Review, and any duly authorized representative of the Division may quash a subpoena if, after a hearing, 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.

(*l*) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subsection (k) of this section shall be heard at least 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.

(m) Subpoenas. – In case of contumacy by, or refusal to obey a subpoena issued to any person by the 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 Division, or its duly authorized representatives, shall have jurisdiction to issue to such person an order requiring such person to appear before the 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 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 Division, shall be punished by a fine of not more than fifty dollars ($50.00).

(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 Division, Board of Review, or in obedience to the subpoena of the Division, Board of Review, or any member thereof, or any duly authorized representative of the Division, or Board of Review in any cause or proceeding before the 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.

(o) State-Federal Cooperation. – In the administration of this Chapter, the 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 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 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 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 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) Reciprocal Arrangements. –

(1) The 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 an employer 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 employer maintains a place of business, provided there is in effect, as to such services, an election by the employer, 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 the employer are deemed to be performed entirely within such state.

b. Combining wage credits. – The 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 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 Division finds will be fair and reasonable as to all affected interests.

e. The services of the 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. The 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 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.

(q) The Board of Review 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 an employer. The Board of Review 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 an employer including the right to determine the amount of contributions, if any, which may be due the Division by any employer. Hearings may be before the Board of Review and shall be held in the central office of the Board of Review 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 Board of Review and a determination of the law applicable to that evidence. The Board of Review shall have the power to provide for the taking of evidence by a hearing officer employed in the capacity of an attorney by the Department. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the Board of Review and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Board 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 employer resides, maintains a place of business, or conducts business; however, the Board of Review may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed to appeal, the party shall within 10 days after notice of such decision or determination, file with the Board of Review exceptions to the decision or the determination, which exceptions will state the grounds of objection to the decision or determination. If any one of the exceptions shall be overruled then 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 Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the Board of Review 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 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 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 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.

(r) The cause shall be entitled "State of North Carolina on Relationship of the Board of Review, Department of Commerce, of North Carolina against (here insert name of appellant)," and if there are exceptions to any facts found by the 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 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.

(s) The decision or determination of the Board of Review 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 Board of Review that any employer is indebted to the 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 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 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 Division or to collect any amount of contribution, penalty or interest adjudged to be due the Division by said decision or determination. In case of an appeal from any decision or determination of the 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.

(t) The conduct of hearings shall be governed by suitable rules and regulations established by the Secretary of Commerce. The manner in which appeals and hearings shall be presented and conducted before the Division shall be governed by suitable rules and regulations established by the Secretary. The 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.

(u) Notices of hearing shall be issued by the Board of Review or its authorized representative and sent by registered mail, return receipt requested, to the last known address of employer, employers, persons, or firms involved. The notice shall be sent at least 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 Division or its authorized representative and shall order 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 Department of Commerce. Any such bond or other undertaking may be forfeited or sued upon as are any other undertakings payable to the State.

(v) None of the provisions or sections herein set forth in subsections (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.

(w) Upon a finding of good cause, the 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).

(x) Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government. – For purposes of this Chapter, the term "confidential information" means any unemployment compensation information in the records of the Division of Employment Security that pertains to the administration of the Employment Security Law that is required to be kept confidential under 20 C.F.R. Part 603, including claim information and any information that reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or that could foreseeably be combined with other publicly available information to reveal any such particulars.

Confidential information is exempt from the public records disclosure requirements of Chapter 132 of the General Statutes. Confidential information may be disclosed only as permitted in this subsection. Any disclosure and redisclosure of confidential information must be consistent with 20 C.F.R. Part 603 and any written guidance promulgated and issued by the U.S. Department of Labor consistent with this regulation and any successor regulation. To the extent a disclosure or redisclosure of confidential information is permitted or required by this federal regulation, the Department's authority to disclose or redisclose the information includes the following:

(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 an employer, 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 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 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 Secretary may by regulation provide, information from the records of the 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 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 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 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. (vii) The Secretary may disclose or authorize redisclosure of any confidential information to an individual, agency, or entity, public or private,

consistent with the requirements enumerated in 20 C.F.R. Part 603 or any successor regulation and any written guidance promulgated and issued by the U.S. Department of Labor consistent with 20 C.F.R. Part 603. (viii) The Division may disclose final decisions and the records of the hearings that led to those decisions only after the expiration of the appeal rights as provided under G.S. 96-15.

(2) Job Service Information. – (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the 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 Division have agreed upon in writing. (ii) The 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 Unit shall collect, collate, and publish statistical and other information relating to the work under the 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 Division's opinion may make further legislation desirable. (iv) Except as provided by 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 employer.

(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).

(4) Regulations. – The Division may provide by rule for procedures by which requests for information will be considered and the methods by which such information may be disclosed. The 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 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 Division, upon written request and on a reimbursable basis only, from disclosing information

from the records of a proceeding compiled for the purpose of resolving issues raised pursuant to the Employment Security Law.

(6) Nothing in this subsection (x) shall operate to relieve any claimant or employer from disclosing any information required by this Chapter or by regulations promulgated thereunder.

(7) Nothing in this subsection (x) shall be construed to prevent the 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 Division, its agents, or its employees.

(7a) Nothing in this subsection shall be construed to prevent the 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 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 compliance with Section 303(i)(1) of the Social Security Act and it shall be construed accordingly.

(7b) Nothing in this subsection shall be construed to prevent the 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 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 the Assistant Secretary, the Board of Review, a hearing officer, appeals referee, or any other person acting under authority of the 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 the Assistant Secretary, the Board of Review, a hearing officer, appeals referee, or any other person acting under the authority of the Division pursuant to the Employment Security Law shall be admissible in proceedings before the North Carolina Industrial Commission.

(y) Service of process upon the 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 Division by regular or courier mail.

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

(1) All requests for advisory rulings shall be made in writing and submitted to the Division. Such requests shall state the facts and statutes or rules on which the ruling is requested.
(2) The 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 Division to decline to issue an advisory ruling.
(3) The 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 Division may decline to issue an advisory ruling if such a ruling may harm the 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 Division.
(5) No advisory ruling shall be binding upon the Division provided that in any subsequent enforcement action initiated by the Division, any person's reliance on such ruling shall be considered in mitigation of any penalty sought to be assessed. (Ex. Sess. 1936, c. 1, s. 11; 1939, c. 2; c. 27, s. 8; c. 52, s. 5; cc. 207, 209; 1941, c. 279, ss. 4, 5; 1943, c. 377, ss. 16-23; 1945, c. 522, ss. 1-3; 1947, c. 326, ss. 1, 3, 4, 26; c. 598, ss. 1, 6, 7; 1949, c. 424, s. 1; 1951, c. 332, ss. 1, 18; 1953, c. 401, ss. 1-4; 1955, c. 385, ss. 1, 2; c. 479; 1957, c. 1059, s. 1; 1969, c. 44, s. 63; c. 575, ss. 1, 2; 1971, c. 673, ss. 1, 2; 1977, c. 727, ss. 8-10; 1979, c. 660, s. 2; 1979, 2nd Sess., c. 1212, s. 2; 1981, c. 160, s. 1; 1983, c. 625, s. 16; 1983 (Reg. Sess., 1984), c. 995, s. 6; 1985, c. 197, ss. 1, 6, 7; c. 552, s. 23; 1987, c. 273; c. 764, ss. 4, 4.1, 5; 1989, c. 583, ss. 1, 2; c. 707, ss. 1, 2; 1991, c. 603, s. 1; c. 723, s. 3; 1993, c. 343, s. 1; c. 512, s. 3; 1995, c. 507, s. 27.8(n); 1999-340, s. 10; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2004-203, s. 8; 2007-251, ss. 1, 2; 2011-401, s. 2.3; 2012-134, s. 6(a); 2013-2, s. 9(b); 2013-224, ss. 1, 2, 19, 20(a), (b); 2014-117, s. 1; 2015-238, ss. 2.4(b), 3.3(a); 2016-4, s. 2; 2021-90, s. 12; 2025-25, s. 29(6).)

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

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

The four funds are:

(1) The Employment Security Administration Fund established under G.S. 96-5.
(2) The Supplemental Employment Security Administration Fund established under G.S. 96-5.1.
(3) The Unemployment Insurance Fund established under G.S. 96-6.
(4) The Unemployment Insurance Reserve Fund established under G.S. 96-6.2. (2013-2, s. 1(b); 2013-224, s. 19.)

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

(a) Fund Established. – The Employment Security Administration Fund is created as a special revenue fund. The fund consists of the following:

(1) Monies appropriated by this State.

(2) Monies received from the United States or another source for the administration of this Chapter.

(3) Monies received from any agency of the United States or any other state as compensation for services or facilities supplied to the agency or state.

(4) Monies 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 monies in the fund.

(5) Proceeds realized from the sale or disposition of equipment or supplies purchased from monies in the fund.

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

(c) Repealed by Session Laws 2013-2, s. 1(a), effective July 1, 2013.

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

(d) through (g) Repealed by Session Laws 2013-2, s. 1(a), effective July 1, 2013. (Ex. Sess. 1936, c. 1, s. 13; 1941, c. 108, ss. 12, 13; 1947, c. 326, s. 5; c. 598, s. 1; 1949, c. 424, s. 2; 1951, c. 332, s. 18; 1953, c. 401, ss. 1, 5; 1977, c. 727, ss. 11-13; 1981, c. 160, s. 2; 1987, c. 17, ss. 1, 2; 1991, c. 689, s. 142; 1991, Ex. Sess., c. 6, s. 1; 1995 (Reg. Sess., 1996), c. 608, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 26.6; 2004-124, s. 13.7B(b); 2005-276, s. 6.37(h); 2006-203, s. 22; 2011-401, s. 2.4; 2013-2, s. 1(a), (b); 2013-224, s. 19.)

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

(a) Fund Established. – The Supplemental Employment Security Administration Fund is created as a special revenue fund. The fund consists of all interest and penalties paid under this Chapter by employers on overdue contributions and any appropriations made to the fund by the General Assembly. Penalties collected on unpaid taxes imposed by this section must be transferred to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1.

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

(1) The payment of costs and charges of administration that the Secretary of Labor determines are not eligible for payment from or were improperly paid from the Employment Security Administration Fund. The Supplemental Employment Security Administration Fund must reimburse the Employment Security Administration Fund for the amount of any improper payment. If the balance in the Supplemental Fund is insufficient, the Secretary must notify the Governor, who must request an appropriation for that purpose.

(2) The temporary stabilization of federal funds cash flow.

(3) Security for loans from the Unemployment Trust Fund.
(4) The refund of an overpayment of interest previously credited to the fund. If an employer takes credit for a previous overpayment of interest when remitting contributions, the amount of credit taken for the overpayment of interest must be reimbursed to the Unemployment Insurance Fund. (2013-2, s. 1(b); 2013-224, ss. 3, 19.)

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

(a) Establishment and Use. – The Unemployment Insurance Fund is established as an enterprise fund. The Division must administer the fund solely for the payment of unemployment compensation as that term is defined by section 3306(h) of the Code, exclusive of expenses of administration, and for refunds of sums erroneously paid into the fund. No money in the fund may be used, directly or indirectly, to pay interest on an advance received from the Unemployment Trust Fund.

This fund consists of the following sources of revenue:

(1) Contributions collected under this Chapter.
(2) Property or securities acquired through the use of monies belonging to the fund.
(3) Interest and investment earnings of the fund.
(4) Monies received from this State's account in the Unemployment Trust Fund in accordance with Title XII of the Social Security Act, as amended.
(5) Monies 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.
(6) Monies 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.
(8) Any federally mandated penalty amount assessed under G.S. 96-18(h).
(9) Amounts transferred from the Unemployment Insurance Reserve Fund.

(b) Accounts. – The State Treasurer must maintain within the fund three separate accounts:

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

(b1) Clearing Account. – The Division must credit monies payable to the Unemployment Insurance Fund to the clearing account. The Controller must immediately deposit amounts in the clearing account with the secretary of the treasury of the United States to the credit of the account of this State in the Unemployment Trust Fund.

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

(c) Benefit Account. – The benefit account consists of monies requisitioned from the State's account in the Unemployment Trust Fund to pay benefits. To obtain funds to pay benefits under this Chapter, the Controller must requisition the amount needed from the State's account in the Unemployment Trust Fund and credit the amount received to this account. Warrants for the payment of benefits are payable from this account. Amounts in the benefit account that are not needed to pay the benefits for which they were requisitioned may be applied to the payment of

benefits for succeeding periods or, in the discretion of the Controller, deposited to the credit of the State's account in the Unemployment Trust Fund.

(d) Discontinuance of Unemployment Trust Fund. – If the Unemployment Trust Fund or the State's account within the federal Fund ceases to exist, the credit balance of the State's account in that Fund must be transferred to the Unemployment Insurance Fund and credited to the benefit account.

(e), (f) Repealed by Session Laws 2013-2, s. 1(b), effective July 1, 2013. (Ex. Sess. 1936, c. 1, ss. 9, 18; 1939, c. 27, s. 7; c. 52, s. 4; c. 208; 1941, c. 108; 1945, c. 522, s. 4; 1947, c. 326, s. 6; 1953, c. 401, ss. 1, 6; 1959, c. 362, s. 1; 1961, c. 454, ss. 1-3; 1969, c. 575, s. 3; 1971, c. 673, ss. 3, 4; 1985, c. 197, s. 2; 2006-66, s. 6.19(a); 2006-203, s. 23; 2006-221, s. 3A; 2006-259, s. 40(a); 2011-401, s. 2.5; 2012-134, s. 3(e); 2013-2, s. 1(b); 2013-224, s. 19; 2013-391, s. 1.)

**§ 96-6.1: Repealed pursuant to the terms of G.S. 96-6.1(c), effective with respect to calendar quarters beginning on or after January 1, 2011.**

**§ 96-6.2. Unemployment Insurance Reserve Fund.**

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

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

(b) Fund Capped. – The balance in the Unemployment Insurance Reserve Fund on January 1 of any year may not exceed the greater of fifty million dollars ($50,000,000) or the amount of interest paid the previous September on advances under Title XII of the Social Security Act. Any amount in the fund that exceeds the cap must be transferred to the Unemployment Insurance Fund. (2013-2, s. 1(b); 2013-224, ss. 4, 19.)

**§ 96-7. Representation in court.**

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

(b) All criminal actions for violation of any provision of this Chapter, or of any rules or regulations issued pursuant thereto, shall be prosecuted as now provided by law by the district attorney or by the prosecuting attorney of any county or city in which the violation occurs. (Ex. Sess. 1936, c. 1, s. 17; 1937, c. 150; 1973, c. 47, s. 2; 2011-401, s. 2.6.)