

**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) 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.

(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.)

**§ 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.)

## Article 2.

### Contributions and Payments by Employers.

**§§ 96-8, 96-9:** Repealed by Session Laws 2013-2, s. 2(a), effective July 1, 2013.

**§ 96-9.1. Purpose.**

The purpose of this Article is to provide revenue to finance the unemployment benefits allowed under this Chapter and to do so in as simple a manner as possible by imposing a State unemployment tax that is similar to the federal unemployment tax imposed under FUTA. All employers that are liable for the federal unemployment tax on wages paid for services performed in this State and all employers that are required by FUTA to be given a state reimbursement option are liable for a State unemployment tax on wages. Revenue from this tax, referred to as a contribution, is credited to the Unemployment Insurance Fund established in G.S. 96-6. (2013-2, s. 2(b); 2013-224, s. 19.)

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

(a) Required Contribution. – An employer is required to make a contribution in each calendar year to the Unemployment Insurance Fund in an amount equal to the applicable percentage of the taxable wages the employer pays its employees during the year for services performed in this State. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed. Taxable wages are determined in accordance with G.S. 96-9.3. The applicable percentage for an employer is considered the employer's contribution rate and determined in accordance with this section.

(b) Contribution Rate for Beginning Employer. – The contribution rate for a beginning employer until the employer's account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date is one percent (1%). An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters and its liability extends over all or part of two consecutive calendar years.

(c) Contribution Rate for Experience-Rated Employer. – The contribution rate for an experience-rated employer who does not qualify as a beginning employer under subsection (b) of this section is determined in accordance with the table set out below and then rounded to the nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on June 30 preceding the computation date. The calculations in the table set out below are applied as of September 1 following the computation date. An employer's experience rating is computed as a reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate.

**UI Trust Fund Balance**

<b>as Percentage of Total Insured Wages</b>	<b>Contribution Rate</b>
Less than or equal to 1%	2.9% minus ERRP
Greater than 1% but less than or equal to 1.25%	2.4% minus ERRP
Greater than 1.25%	1.9% minus ERRP

(d) Notification of Contribution Rate. – The Division must notify an employer of the employer's contribution rate for a calendar year by January 1 of that year. The contribution rate becomes final unless the employer files an application for review and redetermination prior to May

1 following the effective date of the contribution rate. The Division may redetermine the contribution rate on its own motion within the same time period.

(e) Voluntary Contribution. – An employer that is subject to this section may make a voluntary contribution to the Unemployment Insurance Fund in addition to its required contribution. A voluntary contribution is credited to the employer's account. A voluntary contribution made by an employer within 30 days after the date on an annual notice of its contribution rate is considered to have been made as of the previous July 31. (2013-2, s. 2(b); 2013-224, ss. 5, 19; 2013-391, s. 2; 2015-238, s. 4.1(a); 2016-92, s. 5(a).)

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

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

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

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

- (1) Wages paid to an individual in this State by an employer that made contributions in another state upon the wages paid to the individual because the work was performed in the other state.
- (2) Wages paid by a successor employer to an individual when all of the following apply:
  - a. The individual was an employee of the predecessor and was taken over as an employee by the successor as a part of the organization acquired.
  - b. The predecessor employer paid contributions on the wages paid to the individual while in the predecessor's employ during the year of acquisition.
  - c. The account of the predecessor is transferred to the successor. (2013-2, s. 2(b); 2013-224, s. 19.)

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

(a) Account Balance. – The Division must determine the balance of an employer's account on the computation date by subtracting the total amount of all benefits charged to the employer's account for all past periods from the total of all contributions and other amounts credited to the employer for those periods. If the Division finds that an employer failed to file a report or finds that a report filed by an employer is incorrect or insufficient, the Division must determine the employer's account balance based upon the best information available to it and must notify the employer that it will use this balance to determine the employer's reserve ratio unless the employer provides additional information within 15 days of the date of the notice.

(b) Reserve Ratio. – The Division must determine an employer's reserve ratio, which is used to determine the employer's contribution rate. The employer's reserve ratio is the quotient obtained by dividing the employer's account balance on the computation date by the total taxable payroll of the employer for the 36 calendar month period ending June 30 preceding the computation date, expressed as a percentage. (2013-2, s. 2(b); 2013-224, s. 19.)

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

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

- (1) The service is localized in this State. Service is localized in this State if it meets one of the following conditions:
  - a. It is performed entirely within the State.
  - b. It is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State. For example, the individual's service without the State is temporary or transitory in nature or consists of isolated transactions.
- (2) The service is not localized in any state but some of the service is performed in this State, and one or more of the following applies:
  - a. The base of operations is in this State.
  - b. There is no base of operations and the place from which the service is directed or controlled is in this State.
  - c. The service is not performed in any state that has a base of operations or a place from which the service is directed or controlled and the individual who performs the service is a resident of this State.
- (3) The service, wherever performed, is within the United States or Canada and both of the following apply:
  - a. The service is not covered under the employment security law of any other state or Canada.
  - b. The place from which the service is directed or controlled is in this State.
- (4) The service is performed outside the United States or Canada by a citizen of the United States in the employ of an American employer and at least one of the following applies. For purposes of this subdivision, the term "American employer" has the same meaning as defined in section 3306 of the Code:
  - a. The employer's principal place of business in the United States is located in this State.
  - b. The employer has no place of business in the United States, but the employer is one of the following:
    1. An individual who is a resident of this State.
    2. A corporation that is organized under the laws of this State.
    3. A partnership or a trust and more of its partners or trustees are residents of this State than of any other state.
    4. A limited liability company and more of its members are residents of this State than of any other state.
  - c. The employer has elected coverage in this State in accordance with G.S. 96-9.8.
  - d. The employer has not elected coverage in any state and the employee has filed a claim for benefits under the law of this State based on the service provided to the employer. (2013-2, s. 2(b); 2013-224, ss. 19, 20(c).)

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

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

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

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

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

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

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

(e) **Annual Reconciliation.** – A reimbursing employer must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account on the computation date. If there is a deficit in the account, the Division must bill the employer for the amount necessary to bring its account to one percent (1%) of its taxable wages for the immediate four quarters preceding July 1. Except as provided in subsection (j) of this section, any amount in the account in excess of the one percent (1%) of taxable wages will be retained in the employer's account as a credit and will not be refunded to the employer. The Division must send a bill as soon as practical. Payment is due within 30 days from the date a bill is mailed. Amounts unpaid by the due date accrue interest and penalties in the same manner as

past-due contributions and are subject to the same collection remedies provided under G.S. 96-10 for past-due contributions.

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

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

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

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

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

(i) Expired January 1, 2016.

(j) Refund. – If a reimbursing employer erroneously remits an amount in excess of the amount due, the employer may apply to the Division for a refund of the excess amount remitted within the time limits in this subsection. The Division must determine that the requested refund was in excess of the amount due and was erroneously paid. The Division must refund, without interest, the excess amount but in no event will the refund result in an account balance less than one percent (1%) of the reimbursing employer's taxable wages. The refund application must be filed by the later of the following:

(1) Five years from the last day of the calendar year with respect to which a payment was made.

(2) One year from the date on which such payment was made. (2013-2, s. 2(b); 2013-224, ss. 6, 7, 19; 2017-8, s. 3.3(a).)

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

(a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected and administered in the same manner as contributions. Surtaxes collected under this section must be credited to the Unemployment Insurance Reserve Fund established under G.S. 96-6.2. Interest and penalties collected on unpaid surtaxes imposed by this section must be credited to the Supplemental Employment Security Administration Fund. Penalties collected on unpaid surtaxes imposed by this section must be transferred to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1.

(b) Suspension of Tax. – The tax does not apply in a calendar year if, as of September 1 of the preceding calendar year, the amount in the State's account in the Unemployment Trust Fund equals or exceeds one billion dollars (\$1,000,000,000). (2013-2, s. 2(b); 2013-224, ss. 8, 19; 2017-8, s. 3.1(a).)

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

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

- (1) An employer that is not otherwise liable for contributions under G.S. 96-9.2 may elect to pay contributions to the same extent as an employer that is liable for those contributions.
- (2) An employer that pays for services that are not otherwise subject to the contribution requirement may elect to pay contributions on those services performed by individuals in its employ in one or more distinct establishments or places of business.
- (3) An employer that employs the services of an individual who resides within this State but performs the services entirely without the State may elect to have the individual's service constitute employment subject to contributions if no contributions are required or paid with respect to the services under an employment security law of any other state or of the federal government.

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

(c) Termination. – The Division may, on its own motion, terminate coverage of an employer who has become subject to this Chapter solely by electing coverage under this section. This termination may occur within the two-year minimum election period. The Division must give the employer 30 days written notice of a decision to terminate an election. The notice must be mailed to the employer's last known address. An employer that elects coverage under this section may, subsequent to the two-year minimum election period, terminate the election by filing a notice of termination with the Division. The notice must be given prior to the first day of March following the first day of January of the calendar year for which the employer wishes to cease coverage under this section. (2013-2, s. 2(b); 2013-224, s. 19.)

**§ 96-9.9:** Reserved for future codification purposes.

**§ 96-9.10:** Reserved for future codification purposes.

§ 96-9.11: Reserved for future codification purposes.

§ 96-9.12: Reserved for future codification purposes.

§ 96-9.13: Reserved for future codification purposes.

§ 96-9.14: Reserved for future codification purposes.

## Article 2A.

### Administration and Collection of Contributions.

#### § 96-9.15. Report and payment.

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

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

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

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

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

(d) Form of Report. – An employer must complete the tax form prescribed by the Division. An employer or an agent of an employer that reports wages for at least 10 employees must file the portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each employee in an electronic format prescribed by the Division. For failure of an employer to comply with this subsection, the Division must assess a penalty of twenty-five dollars (\$25.00). For failure of an agent of an employer to comply with this subsection, the Division may deny the agent the right to report wages and file reports for that employer for a period of one year following the calendar quarter in which the agent filed the improper report. The Division may reduce or waive a penalty for good cause shown.



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

(f) Domestic Employer Exception. – The Division may authorize an employer of domestic service employees to file an annual report and to file that report by telephone. An annual report allowed under this subsection is due on or before the last day of the month following the close of the calendar year in which the wages are paid. A domestic service employer that files a report by telephone must contact either the tax auditor assigned to the employer's account or the Division of Employment Security in Raleigh and report the required information to that auditor or to that section by the date the report is due. (2013-2, s. 3(b); 2013-224, ss. 18, 19; 2015-238, s. 2.4(c); 2018-94, s. 4(a).)

### **§ 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 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 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 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 Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Division, under the hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars (\$50.00), the Division may not certify the amount to the clerk of court until a field tax auditor or another representative of the Division personally contacts, or unsuccessfully attempts to personally contact, the delinquent and

collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Division may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Division for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Division for service the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the contributions, penalty, interest, and costs due by the employer. Any judgment that is executable and allowed under this section shall be subject to attachment and garnishment under G.S. 1-359(b) in payment of unpaid taxes that are due from the employer and collectable under this Article.

- (2) Any representative of the 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 Division shall not be divulged, published, or open to public inspection other than to the Division's employees in the performance of their public duties. Any employee 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 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 Division against any firm or individual has been satisfied and paid in full, and said statement or certificate is signed by the Secretary of Commerce and attested by the Assistant Secretary, with the seal of the 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. The cancellation shall have the full force and effect of a cancellation entered by an attorney of record for the Division. It shall also be the duty of such clerk, when any such certificate is furnished him by the 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 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 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 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. 96-9.2, 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 Division, to file with the 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 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 Division shall determine that such contributions or any portion thereof was erroneously collected, the 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 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 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 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 Division; but if at the time of such payment he shall notify the 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 Division; and if the same shall not be refunded within 90 days thereafter, he may sue the Division for the amount so demanded; such suit against the 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 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 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 Division, any employer refusing to submit any report required under this Chapter, after 10 days' written notice sent by the 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 Division unsatisfied, and the employer, after 10 days' written notice sent by the Division by registered or certified 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 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 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 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 Board of Review directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by certified mail to the last known address of the employing unit. The order shall be deemed to have been issued on the date the order is mailed by certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or

collection shall, in a case under Title II of the United States Code, be suspended for the period during which the Division is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed.

(j) **Waiver of Interest and Penalties.** – The Division may, for good cause shown, reduce or waive any interest assessed on unpaid contributions under this section. The 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 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 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 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 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 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. (Ex. Sess. 1936, c. 1, s. 14; 1939, c. 27, ss. 9, 10; 1941, c. 108, ss. 14-16; 1943, c. 377, ss. 24-28; 1945, c. 221, s. 1; c. 288, s. 1; c. 522, ss. 17-20; 1947, c. 326, ss. 18-20; c. 598, s. 9; 1949, c. 424, ss. 14-16; 1951, c. 332, ss. 8, 20; 1953, c. 401, s. 15; 1959, c. 362, s. 9; 1965, c. 795, s. 11; 1971, c. 673, s. 21; 1973, c. 108, s. 43; c. 172, s. 4; 1977, c. 727, s. 50; 1979, c. 660, s. 16; 1981, c. 160, s. 16; 1989, c. 770, s. 21; 1991, c. 422, s. 1; 1995, c. 463, ss. 4-6; 1997-398, ss. 1-3; 2001-207, ss. 2, 3; 2005-276, s. 6.37(k); 2007-491, s. 44(1)a; 2011-401, s. 2.9; 2013-224, ss. 9, 20(d); 2015-238, s. 2.5(b).)

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

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

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

(b) Written Statement. – When the Secretary compromises an employer's liability under this section and the amount of the liability is at least one thousand dollars (\$1,000), the Secretary must make a written statement that sets out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the findings on which the compromise is based. The Secretary must sign the statement and keep a record of the statement. (2013-2, s. 3(b); 2013-224, s. 19.)

## Article 2B.

### Administration of Employer Accounts.

**§ 96-11:** Repealed by Session Laws 2013-2, s. 2(a), effective July 1, 2013.

#### **§ 96-11.1. Employer accounts.**

The Division must maintain a separate account for each employer. The Division must credit the employer's account with all contributions paid by the employer or on the employer's behalf and must charge the employer's account for benefits as provided in this Chapter. The Division must prepare an annual statement of all charges and credits made to the employer's account during the 12 months preceding the computation date. The Division must send the statement to the employer when the Division notifies the employer of the employer's contribution rate for the succeeding calendar year. The Division may provide a statement of charges and credits more frequently upon a request by the employer. (2013-2, s. 4; 2013-224, s. 19.)

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

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

amount of benefits charged to that employer's account. (2013-2, s. 4; 2013-224, ss. 10, 19; 2015-238, s. 4.2(a).)

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

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

- (1) The individual left work without good cause attributable to the employer.
- (2) The employer discharged the individual for misconduct in connection with the work.
- (3) The employer discharged the individual solely for a bona fide inability to do the work for which the individual was hired and the individual's period of employment was 100 days or less.
- (4) The separation is a disqualifying separation under G.S. 96-14.7.

(b) To Any Base Period Employer. – Benefits paid to an individual may not be charged to the account of an employer of the individual if the benefits paid meet any of the following descriptions:

- (1) They were paid to an individual who is attending a vocational school or training program approved by the Division.
- (2) They were paid to an individual for unemployment due directly to a disaster covered by a federal disaster declaration.
- (3) They were paid to an individual who left work for good cause under G.S. 96-14.8.
- (4) They were paid as a result of a decision by the Division and the decision is ultimately reversed upon final adjudication.

(c) Current Employer. – At the request of the employer, no benefit charges may be made to the account of an employer that has furnished work to an individual who, because of the loss of employment with one or more other employers, is eligible for partial benefits while still being furnished work by the employer on substantially the same basis and substantially the same wages as had been made available to the individual during the individual's base period. This prohibition applies regardless of whether the employments were simultaneous or successive. A request made under this subsection must be filed in accordance with rules adopted by the Division. (2013-2, s. 4; 2013-224, s. 19; 2017-8, s. 1(b).)

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

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

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



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

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

(c) Applicability. – This section applies to erroneous payments established on or after October 21, 2013. (2013-2, s. 4; 2013-224, ss. 11, 19.)

#### **§ 96-11.5. Contributions credited to wrong account.**

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

(b) Effect on Contribution Rate. – Failure of the Division to credit the correct account for contributions does not affect the contribution rate determined under G.S. 96-9.2 for either the employer whose account should have been credited for the contributions or the employer whose account was credited, and it does not affect the liability of an employer for contributions determined under those rates. No prior contribution rate for either of the employers may be adjusted even though the contribution rates were based on incorrect amounts in their account. An employer is liable for contributions determined under those rates for the five calendar years preceding the year in which the error is determined. This applies regardless of whether the employer acted in good faith. (2013-2, s. 4; 2013-224, s. 19.)

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

The Division must determine the ratio of the credit balance in each employer's account to the total of the credit balances in all employers' accounts as of the computation date. The Division must allocate an amount equal to the interest credited to this State's account in the Unemployment Trust Fund for the four completed calendar quarters preceding the computation date on a pro rata basis to these accounts. The amount must be prorated to an employer's account in the same ratio that the credit balance in the employer's account bears to the total of the credit balances in all the accounts. Voluntary contributions made by an employer after July 31 of a year are not considered a part of the employer's account balance used in determining the allocation under this section until the computation date in the following year. (2013-2, s. 4; 2013-224, s. 19.)

#### **§ 96-11.7. Transfer of account to another employer.**

(a) Acquisition of a Business. – When an employer acquires all of the business of another employer, the account of the predecessor must be transferred as of the date of the acquisition to the successor for use in the determination of the successor's contribution rate. This subsection does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy.

(b) Acquisition of Portion of a Business. – When a distinct and severable portion of an employer's business is transferred to a successor employer and the successor employer continues to operate the acquired business, the portion of the account attributable to the transferred business may, with the approval of the Division, be transferred by mutual consent to the successor employer as of the date of the transfer. A successor employer that is a related entity of the transferring employer is eligible for a transfer from the transferring employer's account only to the extent permitted by rules adopted by the Division. No transfer may be made to the account of an employer that has ceased to be an employer under G.S. 96-11.9.

If a transfer of part or all of an account is allowed under this subsection, the successor employer requesting the transfer may make a request for transfer by filing an application for transfer with the Division within two years after the date the business was transferred.

(c) Acquisition by Related Party. – If an employer transfers its business, or a portion thereof, to another person and, at the time of the transfer, there is substantially common ownership, management, or control of the predecessor employer and the transferee, then the portion of the account attributable to the transferred business must be transferred to the transferee as of the date of the transfer for use in the determination of the transferee's contribution rate.

Substantially common ownership, management, or control exists if one or more persons, entities, or other organizations owning, managing, or controlling the business maintain substantial ownership, management, or control of the transferee. Control may occur by means of ownership of the organization conducting the business, ownership of assets necessary to conduct the business, security arrangements or lease arrangements covering assets necessary to conduct the business, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business. Control is not affected by changes in the form of a business, reorganization of a business, or expansion of a business.

(c1) Acquisition to Obtain Lower Contribution Rate. – The account of the predecessor employer will not be transferred if the Division finds that a person formed or acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.

(d) Contribution Rate. – If the effective date of a transfer of an account under this section is after the computation date in a calendar year, the Division must recalculate the contribution rate for the predecessor employer and the successor employer based on their account balances on the effective date of the account transfer.

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

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

(g) Continuation of Existing Account. – Any transferee subject to a complete transfer of account under this section must not request or maintain an account with the Division other than the account of the existing business. If a transferee receives a new account and the Division subsequently finds that the transferee is subject to a complete transfer of account under this section, the Division must recalculate the annual tax rates based on the combined annual account balances of the new employer and the existing business. (2013-2, s. 4; 2013-224, s. 19; 2016-4, s. 1; 2017-8, s. 4(a).)

**§ 96-11.8. Closure of account.**

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

(b) Exception for Active Duty. – If the Division finds that an employer's business is closed solely because one or more of its owners, officers, or partners or its majority stockholder enters into the Armed Forces of the United States, an ally, or the United Nations, the employer's account may not be terminated. If the business resumes within two years after the discharge or release of the affected individual from active duty in the Armed Forces of the United States, the employer's account is considered to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subsection applies only to an employer that makes contributions under G.S. 96-9.2. This subsection does not apply to an employer that makes payments in lieu of contributions under G.S. 96-9.6. (2013-2, s. 4; 2013-224, s. 19.)

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

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

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

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

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

employer's protest of liability upon discovery is considered an application for termination. An employer is not eligible for termination of liability under this subsection if the employer willfully attempted to defeat or evade the payment of contributions. (2013-2, s. 4; 2013-224, s. 19.)

## Article 2C.

### Benefits Payable for Unemployment Compensation.

§ 96-12: Repealed by Session Laws 2013-2, s. 2(a), effective July 1, 2013.

§ 96-12.01: Recodified as G.S. 96-14.14 by Session Laws 2013-2, s. 6, effective July 1, 2013.

§§ 96-12.1 through 96-14: Repealed by Session Laws 2013-2, s. 2(a), effective July 1, 2013.

#### § 96-14.1. Unemployment benefits.

(a) Purpose. – The purpose of this Article is to provide temporary unemployment benefits as required by federal law to an individual who is unemployed through no fault on the part of the individual and who is able, available, and actively seeking work. Benefits are payable on the basis of service, to which section 3309(a)(1) of the Code applies, performed for a governmental entity, a nonprofit organization, and an Indian tribe in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service.

(b) Valid Claim. – To obtain benefits, an individual must file a valid claim for unemployment benefits, register for work, and have a weekly benefit amount calculated pursuant to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00). An individual must serve a one-week waiting period for each claim filed, except no waiting period applies under this subsection to a claim for unemployment due directly to a disaster covered by a federal disaster declaration. A valid claim is one that meets the employment and wage standards in this subsection for the individual's base period. A valid claim for a second benefit year is one that meets the employment and wage standards in this subsection since the beginning date of the prior benefit year and before the date the new benefit claim is filed:

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

(c) Qualification Determination. – An individual's qualification for benefits is determined based on the reason for separation from employment from the individual's bona fide employer. The individual's bona fide employer is the most recent employer for whom the individual began employment for an indefinite duration or a duration of more than 30 consecutive calendar days, regardless of whether work was performed on all of those days. An individual who is disqualified has no right to benefits. An individual who is disqualified may have the disqualification removed if the individual files a valid claim based on employment with a bona fide employer that employed the individual subsequent to the employment that resulted in disqualification. An individual who

had a prior disqualification removed may be determined to be disqualified based on the reason for separation from employment from the individual's most recent bona fide employer, and the individual must be otherwise eligible for benefits.

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

(e) **Federal Restrictions.** – Benefits are not payable for services performed by the following individuals, to the maximum extent allowed by section 3304 of the Code:

- (1) Instructional, research, or principal administrative employees of educational institutions.
- (2) Employees who provide services in any other capacity for an educational institution.
- (3) Individuals who performed services described in either subdivision (1) or (2) of this subsection in an educational institution while in the employ of an educational service agency. The term "educational service agency" has the same meaning as defined in section 3304 of the Code.
- (4) Professional athletes.
- (5) Aliens. (2013-2, s. 5; 2013-224, ss. 12, 19; 2013-391, s. 3; 2015-238, s. 2.10(a); 2017-8, s. 1(c).)

#### **§ 96-14.2. Weekly benefit amount.**

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

(b) **Partial Weekly Benefit Amount.** – The weekly benefit amount for an individual who is partially unemployed or part-totally employed is the amount the individual would receive under subsection (a) of this section if the individual were totally unemployed, reduced by the amount of any wages earned by the individual in the benefit week in excess of twenty percent (20%) of the benefit amount applicable to total unemployment. If the amount so calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar. Payments received by an individual under a supplemental benefit plan do not affect the computation of the individual's partial weekly benefit.

(c) **Retirement Reduction.** – The amount of benefits payable to an individual must be reduced as provided in section 3304(a)(15) of the Code. This subsection does not apply to social security retirement benefits.

(d) **Income Tax Withholding.** – An individual may elect to have federal income tax deducted and withheld from the individual's unemployment benefits in the amount specified in section 3402 of the Code. An individual may elect to have State income tax deducted and withheld from the individual's unemployment benefits in an amount determined by the individual. The individual may change a previously elected withholding status. The amounts deducted and withheld from unemployment benefits remain in the Unemployment Insurance Fund until

transferred to the appropriate taxing authority as a payment of income tax. The Division must advise an individual in writing at the time the individual files a claim for unemployment benefits that the benefits paid are subject to federal and State income tax, that requirements exist pertaining to estimated tax payments, and that the individual may elect to have the amounts withheld.

(e) COVID-19 Increased Benefit Amount. – The weekly benefit amount calculated under this section shall be increased by fifty dollars (\$50.00). The increased benefit amount is payable for weeks beginning on or after September 5, 2020. The increased benefit amount expires and will not be paid for weeks (i) beginning on or after December 26, 2020, or (ii) immediately following the week that fully expends the amount allocated by the General Assembly for this purpose under Section 3.3(75) of S.L. 2020-4, as amended by House Bill 1105, 2019 Regular Session, whichever occurs first. (2013-2, s. 5; 2013-224, s. 19; 2013-391, s. 4; 2020-97, s. 1.6A; 2021-5, s. 3; 2021-16, s. 2.1.)

**§ 96-14.3. Duration of benefits.**

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

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

(b) Total Benefits. – The total benefits paid to an individual equals the individual's weekly benefit amount allowed under G.S. 96-14.2 multiplied by the number of weeks allowed under subsection (a) of this section. (2013-2, s. 5; 2013-224, ss. 13, 19; 2015-238, s. 2.8(b).)

**§ 96-14.4:** Repealed by Session Laws 2015-238, s. 2.8(a), effective July 1, 2015.

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

(a) Determination. – The Division must determine the reason for an individual's separation from work. An individual does not have a right to benefits and is disqualified from receiving benefits if the Division determines that the individual left work for a reason other than good cause attributable to the employer. When an individual leaves work, the burden of showing good cause

attributable to the employer rests on the individual and the burden may not be shifted to the employer.

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

(c) **Reduced Rate of Pay.** – When an individual leaves work due solely to a unilateral and permanent reduction in the individual's rate of pay of more than fifteen percent (15%), the leaving is presumed to be good cause attributable to the employer. The employer may rebut the presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or nonfeasance on the part of the individual. (2013-2, s. 5; 2013-224, s. 19.)

#### **§ 96-14.6. Disqualification for misconduct.**

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

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

- (1) Conduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee.
- (2) Conduct evincing carelessness or negligence of such degree or recurrence as to manifest an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

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

- (1) Violation of the employer's written alcohol or illegal drug policy.
- (2) Reporting to work significantly impaired by alcohol or illegal drugs.
- (3) Consumption of alcohol or illegal drugs on the employer's premises.
- (4) Conviction by a court of competent jurisdiction for manufacturing, selling, or distributing a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) if the offense is related to or connected with an employee's work for the employer or is in violation of a reasonable work rule or policy.
- (5) Termination or suspension from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs if the offense is related to or connected with the employee's work for an employer or is in violation of a reasonable work rule or policy.
- (6) Any physical violence whatsoever related to the employee's work for an employer, including physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.
- (7) Inappropriate comments or behavior toward supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic that creates a hostile work environment.

- (8) Theft in connection with the employment.
- (9) Forging or falsifying any document or data related to employment, including a previously submitted application for employment.
- (10) Violation of an employer's written absenteeism policy.
- (11) Refusal to perform reasonably assigned work tasks or failure to adequately perform employment duties as evidenced by no fewer than three written reprimands in the 12 months immediately preceding the employee's termination. (2013-2, s. 5; 2013-224, s. 19.)

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

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

(b) Labor Dispute. – An individual is disqualified for benefits if the Division determines the individual's total or partial unemployment is caused by a labor dispute in active progress at the factory, establishment, or other premises at which the individual is or was last employed or by a labor dispute at another place within this State that is owned or operated by the employer that owns or operates the factory, establishment, or other premises at which the individual is or was last employed and that supplies materials or services necessary to the continued and usual operation of the premises at which the individual is or was last employed. An individual disqualified under the provisions of this subsection continues to be disqualified after the labor dispute has ceased to be in active progress for the period of time that is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment. (2013-2, s. 5; 2013-224, s. 19.)

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

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

- (1) Military spouse relocation. – Leaving work to accompany the individual's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another.
- (2) Domestic violence. – Leaving work for reasons of domestic violence if the individual reasonably believes that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family. For purposes of this subdivision, an individual is a victim of domestic violence if one or more of the following applies:
  - a. The individual has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes.
  - b. There is evidence of domestic violence, sexual offense, or stalking. Evidence of domestic violence, sexual offense, or stalking may include any one or more of the following:
    1. Law enforcement, court, or federal agency records or files.



2. Documentation from a domestic violence or sexual assault program if the individual is alleged to be a victim of domestic violence or sexual assault.
  3. Documentation from a religious, medical, or other professional from whom the individual has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking.
- c. The individual has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the individual or upon a minor child with or in the custody of the individual by another individual who has or has had a familial relationship with the individual or minor child. (2013-2, s. 5; 2013-224, s. 19.)

**§ 96-14.9. Weekly certification.**

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

- (1) File a claim for benefits.
- (2) Report as requested by the Division and present valid photo identification meeting the requirements of subsection (k) of this section.
- (3) Meet the work search requirements of subsection (b) of this section.

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

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

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

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

- (1) The individual tests positive for a controlled substance. An individual tests positive for a controlled substance if all of the conditions of this subdivision apply. An employer must report an individual's positive test for a controlled substance to the Division:
  - a. The test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes.
  - b. The test is required as a condition of hire for a job.
  - c. The job would be suitable work for the individual.
- (2) The individual is incarcerated or has received notice to report to or is otherwise detained in a state or federal jail or penal institution. This subdivision does not apply to an individual who is incarcerated solely on a weekend in a county jail and who is otherwise available for work.

- (3) The individual is an alien and is not in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and Naturalization Service.
  - (4) The individual is on disciplinary suspension for 30 or fewer days based on acts or omissions that constitute fault on the part of the employee and are connected with the work.
- (e) **Actively Seeking Work.** – The Division's determination of whether an individual is actively seeking work is based upon the following:
- (1) The individual is registered for employment services, as required by the Division.
  - (2) The individual has engaged in an active search for employment that is appropriate in light of the employment available in the labor market and the individual's skills and capabilities.
  - (3) The individual has made at least three job contacts with potential employers during the week. An individual may satisfy one of the weekly job contacts by attending a reemployment activity offered by a local career center. The Division shall verify the suitability of the activity for the credit and the claimant's attendance at the activity.
  - (4) The individual has maintained a record of the individual's work search efforts. The record must include the potential employers contacted, the method of contact, and the date contacted. The individual must provide the record to the Division upon request.
- (f) **Suitable Work.** – The Division's determination of whether an employment offer is suitable must vary based upon the individual's length of unemployment as follows:
- (1) During the first 10 weeks of a benefit period, the Division may consider all of the following:
    - a. The degree of risk involved to the individual's health, safety, and morals.
    - b. The individual's physical fitness and prior training and experience.
    - c. The individual's prospects for securing local work in the individual's customary occupation.
    - d. The distance of the available work from the individual's residence.
    - e. The individual's prior earnings.
  - (2) During the remaining weeks of a benefit period, the Division must consider any employment offer paying one hundred twenty percent (120%) of the individual's weekly benefit amount to be suitable work.
- (g) **Job Attachment.** – An individual who is partially unemployed and for whom the employer has filed an attached claim for benefits has satisfied the work search requirements for any given week in the benefit period associated with the attached claim if the Division determines the individual is available for work with the employer that filed the attached claim.
- (h) **Job Training.** – An individual who is otherwise eligible may not be denied benefits for any week because of the application to any such week of requirements relating to availability for work, active search for work, or refusal to accept work if the individual is attending a training program approved by the Division.
- (i) **Federal Labor Standards.** – An otherwise eligible individual may not be denied benefits for a given week if the Division determines the individual refused to accept new work for one or more of the following reasons:

- (1) The position offered is vacant due directly to a strike, lockout, or other labor dispute.
- (2) 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.
- (3) The individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization as a condition of employment.

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

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

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

(l) Federal Disaster Declaration. – An individual who is unemployed due directly to a disaster covered by a federal disaster declaration has satisfied the work search requirements for any given week in the benefit period unless the Division requires the individual to conduct a work search. (2013-2, s. 5; 2013-224, ss. 14, 19; 2013-391, s. 5; 2015-238, ss. 2.2(a), 2.6; 2017-8, s. 1(d); 2018-94, s. 3(a); 2020-3, s. 1.3(a).)

#### **§ 96-14.10. Disciplinary suspension.**

The disciplinary suspension of an employee for 30 or fewer consecutive calendar days does not constitute good cause for leaving work. An individual who is on suspension is not available for work and is not eligible for benefits for any week during any part of the disciplinary suspension. If the disciplinary suspension exceeds 30 days, the individual is considered to have been discharged from work because of the acts or omissions that caused the suspension and the issue is

whether the discharge was for disqualifying reasons. During the period of suspension of 30 or fewer days, the individual is considered to be attached to the employer's payroll, and the issue of separation from work is held in abeyance until a claim is filed for a week to which this section does not apply. (2013-2, s. 5; 2013-224, ss. 15, 19.)

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

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

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

- (1) Apply for available suitable work when so directed by the employment office of the Division.
- (2) Accept suitable work when offered.
- (3) Return to the individual's customary self-employment when so directed by the Division.

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

- (1) The individual was recalled within four weeks after a layoff. As used in this subdivision, 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) The individual was recalled in a week in which the work search requirements were satisfied under G.S. 96-14.9(g) due to job attachment. (2013-2, s. 5; 2013-224, ss. 19, 20(e); 2013-391, s. 6.)

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

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

- (1) The individual is customarily self-employed and can reasonably return to self-employment.
- (2) The individual or the individual's spouse is unemployed because the individual's ownership share of the employer was voluntarily sold and, at the time of the sale, one or more of the following applied:
  - a. The employer 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 employer was a partnership, limited or general, and the individual was a limited or general partner.
  - c. The employer was a limited liability company and the individual was a member.

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

(b) Duration of Benefits. – This subsection applies to an individual and the spouse of an individual who is unemployed based on services performed for a corporation in which the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation. The maximum number of weeks an individual or an individual's spouse may receive benefits is six weeks. (2013-2, s. 5; 2013-224, s. 19; 2015-238, s. 2.8(c).)

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

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

Benefits paid for weeks of unemployment for which back pay awards or other similar compensation are made constitutes an overpayment of benefits. The employer must deduct the overpayment from the award prior to payment to the employee and must send the overpayment to the Division within five days of the payment for application against the overpayment. Overpayments not remitted to the Division are subject to the same collection procedures as contributions. The removal of charges made against the employer's account as a result of the previously paid benefits applies to the calendar year in which the Division receives the overpayment. (2013-2, s. 5; 2013-224, s. 19.)

**§ 96-14.14. Extended benefits.**

(a) General Provisions. – Extended benefits payable under sub-subdivision (b)(5)a. of this section shall be paid as required under the Federal-State Extended Unemployment Compensation Act of 1970. Extended benefits payable under sub-subdivisions (b)(5)b. and (b)(5)c. of this section are not required under federal law and may be paid only if the federal government funds one hundred percent (100%) of the costs of providing them. Extended benefits are payable in the manner prescribed by this section.

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

(1) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

a. Has received, prior to such week, all of the regular benefits that were available to him under this Chapter or any other State law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions in G.S. 96-16; or

- b. His benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and
  - c.
    - 1. Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and
    - 2. Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.
- (3) "Extended benefit period" means a period which:
- a. Begins the third week after a week for which there is an "on" indicator; and
  - b. Ends with either of the following weeks, whichever occurs later:
    - 1. The third week after the first week for which there is an "off" indicator; or
    - 2. The 13th consecutive week of such period.

Provided, that no extended benefit period may begin before the 14th week following the end of a prior extended benefit period which was in effect with respect to this State.

- (4) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.
- (5) There is an "on indicator" for this State for a week if the 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:
  - a. Equalled or exceeded 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 equalled or exceeded five percent (5%), or
  - b. Equalled or exceeded six percent (6%), or

- c. With respect to benefits for weeks of unemployment in North Carolina beginning after May 1, 2002:
  - 1. The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds a six and one-half percent (6.5%), and
  - 2. The average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of Labor, for the three-month period referred to in [sub-]sub-subdivision c.1. of this subdivision, equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.
  - 3. Expired effective January 1, 2013, pursuant to Session Laws 2011-145, s. 6.16(d), as amended by Session Laws 2012-134, s. 1(c).
- d. There is a State "off indicator" for a week with respect to sub-subdivision c. of this subdivision, only if, for the period consisting of such week and the immediately preceding 12 weeks, the option specified in sub-subdivision c. does not result in an "on indicator".
- e. Total extended benefit amount –
  - 1. The total extended benefit amount payment to any eligible individual with respect to the applicable benefit year shall be the least of the following amounts:
    - I. Fifty percent (50%) of the total amount of regular benefits which were payable to the individual under this Chapter in the individual's applicable benefit year; or
    - II. Thirteen times the individual's weekly benefit amount that was payable to the individual under this Chapter for a week of total unemployment in the applicable benefit year.
  - 2. I. Effective with respect to weeks beginning in a high unemployment period, [sub-]sub-subdivision e.1. of this subdivision shall be applied by substituting:
    - A. "Eighty percent (80%)" for "fifty percent (50%)" in [sub-sub-]sub-subdivision e.1.I., and
    - B. "Twenty" for "thirteen" in [sub-sub-]sub-subdivision e.1.II.
  - II. For purposes of [sub-sub-]sub-subdivision 2.I., the term "high unemployment period" means any period during which an extended benefit period would be in effect if sub-subdivision c. of this subdivision were applied by substituting "eight percent (8%)" for "six and one-half percent (6.5%)".

3. Expired effective January 1, 2013, pursuant to Session Laws 2011-145, s. 6.16(d), as amended by Session Laws 2012-134, s. 1(c).
- (6) There is an "off indicator" for this State for a week if the 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%).
- (7) "Rate of insured unemployment," for the purposes of subparagraphs [subdivisions] (5) and (6) 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 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.
- (8) "Regular benefits" means benefits payable to an individual under this Chapter or any other State law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) other than extended benefits.
- (9) "State law" means the unemployment insurance law of any state approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code.

(c) 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 by rules adopted by the 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.

(d) 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 Division finds that with respect to such week:

- (1) The individual is an "exhaustee" as defined in subsection [subdivision] (b)(2).
- (2) 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. 96-14.9(f) 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 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 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. 96-14.9(f) 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. 96-14.11 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. 96-14.14(d)(2), to which he was referred by an employment office of the Division, and he has furnished the 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 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.
- (4) Pursuant to section 202(a)(7) of the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373), as amended by section 202(b)(1) of the Unemployment Compensation Amendments of 1992 (Public Law 102-318), for any week of unemployment beginning after March 6, 1993, and before January 1, 1995, the individual is an exhaustee as defined by federal law and 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, the terms

and conditions of State law that apply to claims for regular compensation and to the payment thereof shall apply to claims for extended benefits and to the payment thereof.

- (5) An individual shall not be eligible for extended compensation unless the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages, as determined by a calculation of base period wages based upon total hours worked during each quarter of the base period and the hourly wage rate for each quarter of the base period. For the purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or one and one-half times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest.

(e) Weekly Extended Benefit Amount. – The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts rounded to the nearest lower full dollar amount (if not a full dollar amount). Provided, that for any week during a period in which federal payments to states under Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, P.L. 91-373, are reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. The reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

- (f) (1) Total Extended Benefit Amount. – Except as provided in subdivision (2) hereof, the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:
- a. Fifty percent (50%) of the total amount of regular benefits which were payable to him under this Chapter in his applicable benefit year; or
  - b. Thirteen times his weekly benefit amount which was payable to him under this Chapter for a week of total unemployment in the applicable benefit year.

Provided, that during any fiscal year in which federal payments to states under Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, P.L. 91-373, are reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, the total extended benefit amount payable to an individual with respect to his applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under G.S. 96-14.14(e) and the weekly amounts paid to the individual.

- (2) Notwithstanding any other provisions of this Chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this subdivision, be entitled to receive in that extended benefit period, with respect to weeks of

unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(g) 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 Division shall make an appropriate public announcement; and

(2) Computations required by the provisions of subsection (a)(6) [subdivision (b)(7)] shall be made by the Division, in accordance with regulations prescribed by the United States Secretary of Labor.

(h) Prior to January 1, 1978, any extended benefits paid to any claimant under G.S. 96-14.14 shall not be charged to the account of the base period employer(s) who pay taxes as required by this Chapter. However, fifty percent (50%) of any such benefits paid shall be allocated as provided in G.S. 96-11.2 (except that G.S. 96-11.3 shall not apply), and the applicable amount shall be charged to the account of the appropriate employer paying on a reimbursement basis in lieu of taxes.

On and after January 1, 1978, the federal portion of any extended benefits shall not be charged to the account of any employer who pays taxes as required by this Chapter but the State portion of such extended benefits shall be:

(1) Charged to the account of such employer; or

(2) Not charged to the account of the employer under the provisions of G.S. 96-11.3.

All state portions of the extended benefits paid shall be charged to the account of governmental entities or other employers not liable for FUTA taxes who are the base period employers.

(i) Notwithstanding the provisions of G.S. 96-9.6, G.S. 96-14.14(h), or any other provision of this Chapter, any extended benefits paid which are one hundred percent (100%) federally financed shall not be charged in any percentage to any employer's account.

(j) For weeks of unemployment beginning on or after June 1, 1981, a claimant who is filing an interstate claim under the interstate benefit payment plan shall be eligible for extended benefits for no more than two weeks when there is an "off indicator" in the state where the claimant files. (Ex. Sess. 1936, c. 1, s. 3; 1937, c. 448, s. 1; 1939, c. 27, ss. 1-3, 14; c. 141; 1941, c. 108, s. 1; c. 276; 1943, c. 377, ss. 1-4; 1945, c. 522, ss. 24-26; 1947, c. 326, s. 21; 1949, c. 424, ss. 19-21; 1951, c. 332, ss. 10-12; 1953, c. 401, ss. 17, 18; 1957, c. 1059, ss. 12, 13; c. 1339; 1959, c. 362, ss. 12-15; 1961, c. 454, ss. 17, 18; 1965, c. 795, ss. 15, 16; 1969, c. 575, s. 9; 1971, c. 673, ss. 25, 26; 1973, c. 1138, ss. 3-7; 1975, c. 2, ss. 1-5; 1977, c. 727, s. 52; 1979, c. 660, ss. 18, 19; 1981, c. 160, ss. 17-23; 1981 (Reg. Sess., 1982), c. 1178, ss. 3-14; 1983, c. 585, ss. 12-16; c. 625, ss. 1, 7; 1985, c. 552, s. 9; 1985 (Reg. Sess., 1986), c. 918; 1987, c. 17, s. 8; 1993, c. 122, s. 2; 1993 (Reg. Sess., 1994), c. 680, ss. 1-3; 1995 (Reg. Sess., 1996), c. 646, s. 25(a); 1997-456, s. 27; 1999-340, ss. 4, 5; 2001-414, ss. 42, 43, 44; 2002-143, ss. 1, 1.1; 2011-145, s. 6.16(a), (b); 2011-401, s. 2.12; 2012-134, s. 1(c)-(e); 2013-2, s. 6; 2013-224, ss. 19, 20(f)-(j); 2021-5, s. 2.)

**§ 96-14.15. Emergency unemployment benefits and tax credit to respond to the coronavirus emergency of 2020.**

(a) **Benefits Payable.** – Unemployment benefits are payable in response to the coronavirus emergency in any of the following circumstances:

- (1) An employer temporarily ceases operations due to the coronavirus, preventing the individual from going to work.
- (2) An employer reduces the hours of employment due to the coronavirus.
- (3) An individual has a current diagnosis of the coronavirus.
- (4) An individual is quarantined at the instruction of a health care provider or a local, State, or federal official.

(b) **Exceptions Allowed.** – The provisions of this Chapter apply to benefits payable under this section except as follows:

- (1) **Waiting week.** – No waiting week applies to a claim for unemployment under this section.
- (2) **Work search.** – The work search requirements do not apply to an individual who is eligible for unemployment under this section.
- (3) **Non-charging.** – Benefits paid to an individual under this section are not charged to the account of any base period employer of the individual.
- (4) **Attached claim.** – An employer may file an attached claim for benefits allowed under this section. The restrictions for filing an attached claim under G.S. 96-15(a1) do not apply to an employer-filed claim under this section and a claim filed by an employer under this section is not an attached claim filed under G.S. 96-15(a1).

(c) **Tax Credit.** – An employer is allowed a tax credit for a contribution to the Unemployment Insurance Fund payable under G.S. 96-9.2 for contributions due for the calendar year 2020. The amount of the credit is equal to the amount of contributions payable on the report filed by the employer on or before April 30, 2020.

If an employer remitted the contributions payable with the report due on or before April 30, 2020, the credit will be applied to the contributions payable on the report due on or before July 31, 2020. An employer must file the report to receive the credit. If the amount of the credit exceeds the amount of contributions due on the report, the excess credit amount is considered an overpayment and will be refunded pursuant to G.S. 96-9.15(b).

(d) **Coronavirus.** – For purposes of this section, the term "coronavirus" has the same meaning as defined in section 506 of the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020.

(e) **Applicability.** – This section applies for unemployment benefits filed for periods beginning on or after March 10, 2020, and expires for unemployment benefits filed for periods beginning on or after the earlier of the following: (i) the date the Governor signs an executive order rescinding Executive Order No. 116, Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19, or (ii) December 31, 2020. (2020-3, s. 1.2(a).)

#### **§ 96-14.16. Emergency unemployment benefits and tax rate reduction to respond to the coronavirus emergency of 2021.**

(a) **Extended Benefit Period.** – With respect to determining whether the State is in an extended benefits period beginning November 1, 2020, through December 31, 2021, the State shall disregard the requirement in G.S. 96-14.14(b)(3) that no extended period may begin before the

fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

(b) **Deferral of Regular Unemployment Compensation Payment.** – The purpose of this subsection is to elect the option by which the State will coordinate the PEUC and regular unemployment compensation programs for individuals who meet the four criteria to be paid PEUC, as required by the Unemployment Insurance Program Letter 17-20, Change 2, issued by the U.S. Department of Labor on December 31, 2020. The State elects option one, which requires an individual whose benefit year has expired to file a regular unemployment initial claim in a new benefit year but defers payment of the new regular unemployment compensation claim until the individual's PEUC claim has been exhausted or the PEUC program has expired, whichever occurs first. For purposes of this subsection, "PEUC" means the Pandemic Emergency Unemployment Compensation program.

(c) **Tax Rate Reduction.** – For the calendar year 2021, the base contribution rate determined under G.S. 96-9.2(c) for an experience-rated employer will remain at one and nine-tenths percent (1.9%).

(d) **Applicability.** – This section applies for unemployment benefits filed for periods beginning on or after March 10, 2020, and expires for unemployment benefits filed for periods beginning on or after the earlier of the following: (i) the date the Governor signs an executive order rescinding Executive Order No. 116, Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19, or (ii) December 31, 2021. (2021-5, s. 1.)

## Article 2D.

### Administration of Benefits.

#### **§ 96-15. Claims for benefits.**

(a) **Generally.** – Claims for benefits must be made in accordance with rules adopted by the Division. An employer must provide individuals providing services for it access to information concerning the unemployment compensation program. The Division must supply an employer with any printed statements and other materials that the Division requires an employer to provide to individuals without cost to the employer.

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

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

(a2) **Federal Disaster Declaration.** – An employer may file claims for employees through the use of automation in the case of unemployment due directly to a disaster covered by a federal disaster declaration.

- (b) (1) Initial Determination. – A representative designated by the 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 Assistant Secretary or 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.

No claim for benefits may be withdrawn by a claimant except upon the filing of a notice of withdrawal within 10 days from the earlier of mailing or delivery of his monetary determination to him and a finding of good cause by the Assistant Secretary or designee.

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

Provided, any interested employer shall be allowed 10 days from the mailing or delivery of the notice of the filing of a claim against the employer's account, whichever first occurs, to file with the Division its protest of the claim in order to have the claim referred to an adjudicator for a decision on the question or issue raised. Any protest filed must contain a basis for the protest and supporting statement of facts, and the protest may not be amended after the 10-day period from the mailing or delivery of the notice of filing of a claim has expired. No payment of benefits shall be made by the Division to a claimant until one of the following occurs:

- a. The employer has filed a timely protest to the claim.
- b. The 10-day period for the filing of a protest by the employer has expired.
- c. A determination under this subdivision has been made.

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

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

(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 rules adopted by the Division. The 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 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 Division by 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 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 rules as the 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 Division as a hearing officer under 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 or hearing officer; violation of this prohibition shall be

grounds for removal. Whenever an appeal is taken from a decision of the appeals 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 Board of Review may dismiss the appeal.

(c1) Unless required for disposition of an ex parte matter authorized by law, 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 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 Division, the appeals referee, or other authority assigned to make the decision in the matter to be continued. A continuance may be granted only upon such terms and conditions as the Division by rule shall provide. Acceptable grounds for granting a continuance shall include, but not be limited to, those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State, such as service as a member of the North Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater jurisdiction.

(e) Review by the 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.

(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 rules adopted by the Division for determining the rights of the parties, whether or not such rules 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. If the testimony is recorded, it need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such 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 Division such reasonable fee for the transcript as the Division may by rule provide. The fee so prescribed by the 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 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 Division shall waive the fee.



The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer, or other employee assigned to make the decision believes the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision may accept the stipulation and render a decision based on the stipulation. If the appeals referee, hearing officer, or other employee assigned to make the decision does not believe the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision must reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded hearing.

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

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the Division must transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost incurred by the refusal. The court may require or permit subsequent corrections or additions to the record when the court considers the changes 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 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 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 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 Division upon appeal. Upon the final determination of the case or proceeding, the 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 Division allowed benefits.

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

(k) Irrespective of any other provision of this Chapter, the 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)). (Ex. Sess. 1936, c. 1, s. 6; 1937, c. 150; c. 448, s. 4; 1941, c. 108, s. 5; 1943, c. 377, ss. 9, 10; 1945, c. 522, ss. 30-32; 1947, c. 326, s. 23; 1951, c. 332, s. 15; 1953, c. 401, s. 19; 1959, c. 362, ss. 16, 17; 1961, c. 454, s. 21; 1965, c. 795, ss. 20-22; 1969, c. 575, ss. 13, 14; 1971, c. 673, ss. 30, 30.1; 1977, c. 727, s. 54; 1981, c. 160, ss. 27-32; 1983, c. 625, ss. 10-14; 1985, c. 197, s. 9; c. 552, ss. 18-20; 1987 (Reg. Sess., 1988), c. 999, s. 6; 1989, c. 583, ss. 11, 12; c. 707, s. 4; 1991, c. 723, ss. 1, 2; 1993, c. 343, ss. 4, 5; 1999-340, ss. 6, 7; 2004-124, s. 13.7B(c); 2005-122, s. 1; 2006-242, s. 1; 2011-401, s. 2.16; 2012-134, s. 2(c), (d); 2013-2, s. 7(b); 2013-224, ss. 16, 17, 19; 2015-238, ss. 2.3(a), 2.9; 2017-8, s. 3.2(a); 2017-203, s. 6; 2018-94, ss. 2, 5(a); 2020-3, s. 1.4(a); 2021-5, ss. 4, 5, 6(a).)

#### **§ 96-15.01. Establishing a benefit year.**

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

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

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

- (1) Totally unemployed. – The claimant's earnings for the week, including payments in subsection (c) of this section, would not reduce the claimant's weekly benefit amount as calculated in G.S. 96-14.2.
- (2) Partially unemployed. – The claimant is payroll attached and both of the following apply:
  - a. The claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which the claimant is employed because of lack of work during the payroll week for which the claimant is requesting benefits.
  - b. The claimant's earnings for the payroll week for which the claimant is requesting benefits, including payments in subsection (c) of this section, would qualify the claimant for a reduced weekly benefit amount as calculated in G.S. 96-14.2.
- (3) Part-totally unemployed. – The claimant has no payroll attachment during all or part of the week, and the claimant's earnings for odd jobs or subsidiary work

would qualify the claimant for a reduced weekly benefit amount as calculated in G.S. 96-14.2.

(c) Separation Payments. – An individual is not unemployed if, with respect to the entire calendar week, the individual receives or will receive as a result of the individual's separation from work remuneration in any form. Amounts paid to an individual for paid time off that was available, but unused, before the individual's separation under a written policy in effect before the individual's separation are not remuneration as a result of separation. If the remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it had been earned by the individual during a week of employment. An individual may be unemployed, as provided in subsection (b) of this section, if the individual is receiving payment applicable to less than the entire week.

(d) Substitute School Personnel. – An individual that performs service in a school as a substitute is not unemployed for days or weeks when the individual is not called to work unless the individual was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For purposes of this subsection, a full-time substitute is an employee that works for more than 30 hours a week for the school on a continual basis for a period of six months or more. (2013-2, s. 7(b); 2013-224, s. 19; 2017-8, s. 2(a).)

#### **§ 96-15.1. Protection of witnesses from discharge, demotion, or intimidation.**

(a) No person may discharge, demote, or threaten any person because that person has testified or has been summoned to testify in any proceeding under the Employment Security Act.

(b) Any person who violates the provisions of this section shall be liable in a civil action for reasonable damages suffered by any person as a result of the violation, and an employee discharged or demoted in violation of this section shall be entitled to be reinstated to his former position. The burden of proof shall be upon the party claiming a violation to prove a claim under this section.

(c) The General Court of Justice shall have jurisdiction over actions under this section.

(d) The statute of limitations for actions under this section shall be one year pursuant to G.S. 1-54. (1987, c. 532, s. 1.)

#### **§ 96-15.2. Protection of witness before the Employment Security Commission.**

If any person shall by threats, menace, or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any proceeding brought under the Employment Security Act, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such proceeding, he shall be guilty of a Class 1 misdemeanor. (1987, c. 532, s. 2; 1993, c. 539, s. 673; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 96-15.3. Board of Review.**

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

(b) Members. – The BOR consists of three members appointed by the Governor and subject to confirmation by the General Assembly as provided in subsection (c) of this section. One

member must be classified as representative of employees, one member must be classified as representative of employers, and one member must be classified as representative of the general public. The member appointed to represent the general public will serve as chair of the BOR and must be a licensed attorney in this State.

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

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

(d) Vacancies. – For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the regular session, (ii) during any adjournment of the regular session for more than 10 days, and (iii) after sine die adjournment of the regular session. A vacancy in an office of the BOR prior to the expiration of the term of office must be filled in accordance with this subsection:

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

(2) During legislative interim. – If a vacancy in an office arises or exists when the General Assembly is not in session, the Governor must appoint an individual to that office to serve on an interim basis pending confirmation by the General Assembly. The Governor must submit the name of the individual to be appointed to fill the vacancy for the remainder of the unexpired term to the General Assembly for confirmation within 14 days of the date the General Assembly convenes or reconvenes for the next regular session. If the Governor fails to timely submit a nomination, the General Assembly will appoint to fill the vacancy as provided in subsection (e) of this section.

(e) Legislative Appointments. – If the Governor fails to timely submit the name of an individual to be appointed to the BOR as provided in this section, then the General Assembly may appoint an individual to fill the vacancy in accordance with G.S. 120-121 and the provisions of

this subsection. If the vacancy occurs in an odd-numbered year, the appointment is made upon the recommendation of the President Pro Tempore of the Senate. If the vacancy occurs in an even-numbered year, the appointment is made upon the recommendation of the Speaker of the House of Representatives. (2015-238, s. 3.3(b).)

**§ 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 Division; except that any successor under G.S. 96-11.7 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 Division shall determine or redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods thereof. The 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 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 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 Division.

(d) A seasonal determination shall become effective unless an interested party files an application for review within 10 days after the beginning date of the first period of production operations to which it applies. Such an application for review shall be deemed to be an application for a determination of status, as provided in G.S. 96-4, subsections (q) through (u) of this Chapter, and shall be heard and determined in accordance with the provisions thereof.

(e) All wages paid to a seasonal worker during his base period shall be used in determining his weekly benefit amount; provided however, that all weekly benefit amounts so determined shall be rounded to the nearest lower full dollar amount (if not a full dollar amount).

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

- (3) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on seasonal wages shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in G.S. 96-14.3, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.
  - (4) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in G.S. 96-14.3, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.
  - (5) In no case shall a seasonal worker be eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in G.S. 96-14.3.
- (g) All benefits paid to a seasonal worker shall be charged in accordance with G.S. 96-11.2.
- (h) The benefits payable to any otherwise eligible individual shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a seasonal determination applying to a pursuit by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in such base period.
- (i) Nothing in this section shall be construed to limit the right of any individual whose claim for benefits is determined in accordance herewith to appeal from such determination as provided in G.S. 96-15 of this Chapter.
- (j) As used in this section:
- (1) "Pursuit" means an employer or branch of an employer.
  - (2) "Branch of an employer" means a part of an employer's activities which is carried on or is capable of being carried on as a separate enterprise.
  - (3) "Production operations" mean all the activities of a pursuit which are primarily related to the production of its characteristic goods or services.
  - (4) "Active period or periods" of a seasonal pursuit means the longest regularly recurring period or periods within which production operations of the pursuit are customarily carried on.
  - (5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its active period or periods. The Division may prescribe by regulation the manner in which seasonal wages shall be reported.
  - (6) "Seasonal worker" means a worker at least twenty-five percent (25%) of whose base period wages are seasonal wages.
  - (7) "Interested party" means any individual affected by a seasonal determination.
  - (8) "Inactive period or periods" of a seasonal pursuit means that part of a calendar year which is not included in the active period or periods of such pursuit.
  - (9) "Nonseasonal wages" mean the wages earned in a seasonal pursuit within the inactive period or periods of such pursuit, or wages earned at any time in a nonseasonal pursuit.
  - (10) "Wages" mean remuneration for employment. (1939, c. 28; 1941, c. 108, s. 7; 1943, c. 377, s. 141/2; 1945, c. 522, s. 33; 1953, c. 401, ss. 20, 21; 1957, c.

1059, s. 14; 1959, c. 362, s. 18; 1983, c. 585, s. 19; 2011-401, s. 2.17; 2013-2, s. 9(c); 2013-224, ss. 19, 20(k), (l); 2013-391, s. 7; 2015-238, s. 2.8(d).)

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

(a) **Waiver of Rights Void.** – Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of individuals in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) or be imprisoned for not more than six months, or both.

(b) **Representation.** – Any claimant or employer who is a party to any proceeding before the 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 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 Division or its representative, and in any court proceeding under this Chapter each party shall bear its own costs and legal fees.

(c) **No Assignment of Benefits; Exemptions.** – Except as provided in subsection (d) of this section, any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void.

- (d) (1) **Definitions.** – For the purpose of this subsection and when used herein:
- a. "Unemployment compensation" means any compensation found by the Division to be payable to an unemployed individual under the Employment Security Law of North Carolina (including amounts payable by the 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 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.
  - b. "Child support obligation" includes only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

- c. "State or local child support enforcement agency" means any agency of this State or a political subdivision thereof operating pursuant to a plan described in subparagraph b. above.
- (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 Division to be eligible for payment of unemployment compensation, the 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 Division, the 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 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 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 Division to the appropriate State or local child support enforcement agency.
  - d. The Department of Health and Human Services and the Division are hereby authorized to enter into one or more agreements which may provide for the payment to the 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 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 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 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.

- (3) Any amount deducted and withheld under paragraph (2) of this subdivision shall, for all purposes, be treated as if it were paid to the individual as unemployment compensation and then paid by such individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations.
- (4)
  - a. On or before April 1 of 1983 and each calendar year thereafter, the 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 Division generated thereby.
  - b. At least 20 days prior to September 25, 1982, the 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 Division under this subsection attributable to child support obligations enforced by the agency. (Ex. Sess. 1936, c. 1, s. 15; 1937, c. 150; 1979, c. 660, s. 22; 1981, c. 762, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1178, ss. 1, 2; 1985, c. 552, s. 21; 1997-443, s. 11A.118(a); 1997-456, s. 27; 2011-401, s. 2.18.)

#### **§ 96-18. Penalties.**

- (a)
  - (1) It shall be unlawful for any person to make a false statement or representation knowing it to be false or to knowingly fail to disclose a material fact to obtain or increase any benefit under this Chapter or under an employment security law of any other state, the federal government, or of a foreign government, either for himself or any other person. Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state or foreign government for misrepresentation to obtain benefits under the law of this State shall be made available to the agency administering the employment security law of any such state or foreign government for the purpose of such prosecution. Photostatic copies of all records of agencies of other states or

foreign governments required in the prosecution of any criminal action under this section shall be as competent evidence as the originals when certified under the seal of such agency, or when there is no seal, under the hand of the keeper of such records.

- (2) A person who violates this subsection shall be found guilty of a Class I felony if the value of the benefit wrongfully obtained is more than four hundred dollars (\$400.00).
- (3) A person who violates this subsection shall be found guilty of a Class 1 misdemeanor if the value of the benefit wrongfully obtained is four hundred dollars (\$400.00) or less.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a Class 1 misdemeanor; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(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 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 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.

(c) Any person who shall willfully violate any provisions of this Chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Chapter, or for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be guilty of a Class 1 misdemeanor, and each day such violation continues shall be deemed to be a separate offense.

(d) Repealed by Session Laws 1983, c. 625, s. 15.

(e) An individual shall not be entitled to receive benefits for a period of 52 weeks beginning with the first day of the week following the date that notice of determination or decision is mailed finding that he, or another in his behalf with his knowledge, has been found to have knowingly made a false statement or misrepresentation, or who has knowingly failed to disclose a material fact to obtain or increase any benefit or other payment under this Chapter.

(f) Repealed by Session Laws 1983, c. 625, s. 15.

(g) (1) Repealed by Session Laws 2012-134, s. 4(b), effective October 1, 2012.

(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 Division) shall be liable to repay such sum to the Division as provided in subdivision (3) of this subsection.

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

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 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 Division, under the hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the 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 Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case, no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution or alias execution, shall be made to the Division, together with all monies collected thereunder, and when such order, execution or alias is referred to the agent of the Division for service, the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of execution. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the overpayments and costs due by the claimant. Additionally, the 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 Division to have been overpaid under subparagraph (2) above due to fraudulent nondisclosure or misrepresentation shall be liable to have the sums deducted from future benefits payable to the person under this Chapter. The amount deducted

- may be up to one hundred percent (100%) of that person's weekly benefit amount.
- d. Any person who has been found by the Division to have been overpaid under subparagraph (2) above due to nonfraudulent reasons shall be liable to have the sums deducted from future benefits payable to the person under this Chapter but the amount deducted for any week shall be reduced by no 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 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 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 Division may remove the debt of the deceased claimant from its records.

(h) **Mandatory Federal Penalty.** – A person who has been held ineligible for benefits under subsection (e) of this section and who, because of those same acts or omissions, has received any sum as benefits under this Chapter to which the person is not entitled shall be assessed a penalty in an amount equal to fifteen percent (15%) of the amount of the erroneous payment. The penalty amount shall be payable to the Unemployment Insurance Fund. The penalty applies to an erroneous payment made under any State program providing for the payment of unemployment compensation as well as an erroneous payment made under any federal program providing for the payment of unemployment compensation. The notice of determination or decision advising the person that benefits have been denied or adjusted pursuant to subsection (e) of this section must include the reason for the finding of an erroneous payment, the penalty amount assessed under this subsection, and the reason the penalty has been applied.

The penalty amount may be collected in any manner allowed for the recovery of the erroneous payment, except that the penalty amount may not be recovered through offsets of future benefits. When a recovery with respect to an erroneous payment is made, any recovery applies first to the principal of the erroneous payment, then to the federally mandated penalty amount imposed under this subsection, and finally to any other amounts due. (Ex. Sess. 1936, c. 1, s. 16; 1943, c. 319; c. 377, ss. 29, 30; 1945, c. 552, s. 34; 1949, c. 424, s. 26; 1951, c. 332, s. 16; 1953, c. 401, ss. 1, 22; 1955, c. 385, s. 9; 1959, c. 362, ss. 19, 20; 1965, c. 795, ss. 23, 24; 1971, c. 673, s. 31; 1977, c. 727, s. 55; 1979, c. 660, ss. 23-25; 1981, c. 160, s. 33; 1983, c. 625, s. 15; 1985, c. 552, s. 22; 1987, c. 103, s. 4; 1989, c. 583, ss. 13, 14; 1993, c. 343, s. 7; c. 539, ss. 674-676; 1994, Ex. Sess., c. 24, s. 14(c); 2003-67, s. 2; 2005-410, s. 6; 2011-401, s. 2.19; 2012-134, ss. 3(d), 4(a)-(c); 2013-2, s. 9(d); 2013-224, s. 19.)

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

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

- (1) Made a false statement or misrepresentation.
- (2) Failed to disclose a material fact.

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

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

The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information that identifies an individual who owes a fraudulent overpayment that is collectible under this section and the amount of the overpayment. The Secretary may submit the information on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the individual and must inform the Secretary of its determination. The Secretary

must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution under G.S. 110-139 for providing information for use in locating a noncustodial parent.

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

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

- (1) The individual's name.
- (2) The individual's social security number or federal identification number.
- (3) The amount of fraudulent overpaid benefits the individual owes.
- (4) An explanation of the liability of a garnishee for fraudulent overpayment of unemployment insurance benefits owed by an overpaid individual.
- (5) An explanation of the garnishee's responsibility concerning the notice.

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

Upon receipt of a written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the fraudulent overpayment of unemployment benefits by civil action. (2013-2, s. 7(b); 2013-224, s. 19.)

#### **§ 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 Division of Employment Security shall be reduced as rapidly as possible.

The funds remaining available for use by the 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 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 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 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. (1937, c. 363; 1939, c. 52, s. 8; 1947, c. 598, s. 1; 1977, c. 727, s. 56; 2011-401, s. 2.20.)

### Article 3.

#### Employment Service Division.

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

The 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 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 Division is hereby designated and constituted the agency of this State for the purpose of said act. The Secretary is directed to appoint the head, other officers, and employees of the Employment Security Section. (Ex. Sess. 1936, c. 1, s. 12; 1941, c. 108, s. 11; 1947, c. 326, s. 24; 2011-401, s. 2.21.)

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

The duties of the Employment Security Section include the following:

- (1) To cooperate with all State and federal agencies in attempting to secure suitable employment and fair treatment for military veterans and disabled veterans.
- (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 Section must refer to reemployment services in accordance with that law. (1921, c. 131, s. 3; C.S., s. 7312(c); Ex. Sess. 1936, c. 1, s. 12; 1979, c. 660, s. 26; 1993 (Reg. Sess., 1994), c. 680, s. 6; 2011-401, s. 2.22.)

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

The Employment 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 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. (1921, c. 131, s. 4; C.S., s. 7312(d); Ex. Sess. 1936, c. 1, s. 12; 1979, c. 660, s. 27; 2011-401, s. 2.23.)

**§ 96-23: Repealed by Session Laws 1985, c. 197, s. 8.**

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

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

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

- (1) Location of the population served.
- (2) Staff availability.
- (3) Proximity of local offices to each other.
- (4) Use of automation products to provide services.
- (5) Services and procedural efficiencies.
- (6) Any other factors the Division considers necessary in determining the appropriate number and location of local offices. (1921, c. 131, s. 6; C.S., s. 7312(f); 1931, c. 312, s. 3; 1935, c. 106, s. 4; Ex. Sess. 1936, c. 1, s. 12; 2011-401, s. 2.24; 2013-2, s. 8; 2013-224, s. 19.)

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

It shall be lawful for the Employment 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. (1921, c. 131, s. 7; C.S., s. 7312(g); 1931, c. 312, s. 3; Ex. Sess. 1936, c. 1, s. 12; 1979, c. 660, s. 28; 2011-401, s. 2.25.)

**§ 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 Security Section and to appropriate and expend the necessary money upon such conditions as may be approved by the Employment 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. (1921, c. 131, s. 8; C.S., s. 7312(h); 1931, c. 312, s. 3; 1935, c. 106, s. 5; Ex. Sess. 1936, c. 1, s. 12; 2011-401, s. 2.26.)

**§ 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 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, 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 Division may accept moneys, services, or quarters as a contribution

to the Employment Security Administration Fund. (1935, c. 106, s. 7; Ex. Sess. 1936, c. 1, s. 12; 1941, c. 108, s. 11; 1947, c. 598, s. 1; 2011-401, s. 2.27.)

**§ 96-28. Repealed by Session Laws 1951, c. 332, s. 17.**

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

Every State agency shall list with the 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 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 Division. The listing agency shall report to the Division the filling of any listed opening within 15 days after the opening has been filled.

The 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 Human Resources Commission, upon the request of a State agency, if the 21-day listing requirement for these classifications hinders the agency in providing essential services. (1973, c. 715, s. 1; c. 1341; 1985, c. 358; 1989, c. 583, s. 16; 1991, c. 357, s. 1; 2011-401, s. 2.28; 2013-382, s. 9.1(c).)

Article 4.

Labor and Economic Analysis Division: Job Training, Education, and Placement Information Management.

**§ 96-30. Findings and purpose.**

The General Assembly finds it in the best interests of this State that the establishment, maintenance, and funding of State job training, education, and placement programs be based on current, comprehensive information on the effectiveness of these programs in securing employment for North Carolina citizens and providing a well-trained workforce for business and industry in this State. To this end, it is the purpose of this Article to require the establishment of an information system that maintains up-to-date job-related information on current and former participants in State job training and education programs. (1995, c. 507, s. 25.6(a).)

**§ 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 the Labor and Economic Analysis Division under this Article.
- (2) Repealed by Session Laws 2012-134, s. 5(b), effective June 29, 2012.
- (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. (1995, c. 507, s. 25.6(a); 2000-140, s. 93.1(d); 2011-401, s. 2.29; 2012-134, s. 5(b).)

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

(a) The Department of Commerce, Labor and Economic Analysis Division (LEAD), shall develop, implement, and maintain a common follow-up information management system for tracking the performance measures related to 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, LEAD 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) LEAD 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 LEAD 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.

(d) The LEAD shall do the following:

- (1) Collaborate with the NCWorks Commission to develop common performance measures across workforce programs in the Department of Commerce, the Department of Health and Human Services, the Community Colleges System Office, the Department of Administration, and the Department of Public Instruction that can be tracked through the CFS in order to assess and report on workforce development program performance.
- (2) Determine whether other workforce development programs not participating in CFS should be required to report information and data.
- (3) Provide information from CFS to reporting agencies annually.
- (4) Provide training for participating agencies to ensure data quality and consistency.
- (5) Develop common data definitions that are shared across agencies contributing information to the system.

(e) The Department of Commerce shall ensure that funding and staff resources for the CFS are not diverted to other programs or systems managed by the Department of Commerce. (1995, c. 507, s. 25.6(a); 2000-140, s. 93.1(e); 2001-424, ss. 12.2(b), 20.17(a); 2011-401, s. 2.30; 2012-131, s. 4(a); 2012-134, s. 5(c); 2013-391, s. 8; 2015-241, s. 15.11(d).)

**§ 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 Labor and Economic Analysis Division all data and information available to or within the agency or entity's possession requested by the Division for input into the common follow-up information management system authorized under this Article and for such other official functions as are performed by the Division. The Division of Employment Security shall provide all information in its possession and control requested by the Division in order for the Division to accomplish the purpose set forth in this Article and such other official functions performed by it.

(a1) Local school administrative units shall not be required to report directly to the Labor and Economic Analysis Division. The Department of Public Instruction shall be responsible for

the collection of information from local school administrative units for input into the common follow-up information management system authorized under this Article and for such other official functions as are performed by the Division.

(b) Each agency or entity required to report information and data to the Labor and Economic Analysis Division under this Article shall maintain true and accurate records of the information and data requested by the Division. The records shall be open to the Division for inspection and copying at reasonable times and as often as necessary. Each agency or entity shall further provide, upon request by the Division, sworn or unsworn reports with respect to persons employed or trained by the agency or entity, as deemed necessary by the Division to carry out the purposes of this Article. Information obtained by the Division from the agency, entity, or the Division of Employment Security shall be held by the Division as confidential, subject to the State and federal laws governing treatment of such information, and shall not be published or open to public inspection other than in a manner that protects the identity of individual persons and employers. (1995, c. 507, s. 25.6(a); 2011-401, s. 2.31; 2012-134, s. 5(d); 2013-226, s. 7.)

**§ 96-34. Prohibitions on use of information collected.**

Data and information reported, collected, maintained, disseminated, and analyzed may not be used by any State or local government agency or entity for purposes of making personal contacts with current or former students or their employers or trainers. (1995, c. 507, s. 25.6(a).)

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

(a) The Secretary shall present annually by May 1 to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee 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 Secretary shall report to the Governor and to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee 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. (1995, c. 507, s. 25.6(a); 2000-140, s. 93.1(a); 2001-424, ss. 12.2(b), 20.17(b); 2011-401, s. 2.32; 2012-134, s. 5(e); 2017-57, s. 14.1(q); 2018-142, s. 13(a).)

Article 5.

Miscellaneous Provisions.

**§ 96-40. Unemployment insurance program integrity; reporting.**

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

include the rigorous and consistent use of business intelligence and data analytics for enhanced unemployment insurance program integrity.

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

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

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

- (1) Metrics regarding unemployment benefits overpayments, improper payments, and fraudulent payments, in terms of both percentage and dollar amount.
- (2) Information on fraud perpetrator metrics, in terms of percent and value, by type (whether by employer or claimant), and activity subcategory, such as employee misclassification, unemployment insurance tax rate manipulation (SUTA dumping), fictitious employers, fictitious claimants, deceased claimants, incarcerated claimants, work and earn, and similar activities.
- (3) Quantified investigation activity, including the following:
  - a. Type and subcategory of investigations.
  - b. Number of alerts received during the quarter.
  - c. Number of alerts investigated during the quarter.
  - d. Number of false positives.
  - e. Number of dispositions entered.

(d) Annual Reporting. – Beginning January 1, 2016, the Division shall make an annual report to the chairs of the Joint Legislative Oversight Committee on Unemployment Insurance, the chairs of the Joint Legislative Oversight Committee on Information Technology, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division on its efforts to carry out all of the directives in this section. At a minimum, each annual report shall include all of the following information:

- (1) The methodology used by the Division to determine analytic priorities for unemployment insurance program integrity investigation.
- (2) A report on the State's Benefit Accuracy Measurement (BAM) as required by the U.S. Department of Labor, including how North Carolina's BAM has changed over time and how its current rate compares to other states. The report shall also include an update on BAM methodology and information regarding how it might be modified.
- (3) An explanation of the Division's unemployment insurance program integrity activities in coordination with the Office of Information Technology Services, the Department of Health and Human Services, the Department of Revenue, and the Office of State Controller as required by subsection (b) of this section.
- (4) Division workflows, both intra-agency and interagency, to address process problems and program integrity issues, including identification of tools, resources, and plans for continued improvement of unemployment insurance program integrity efforts.
- (5) An analysis of the information required by subsection (c) of this section, along with an explanation of how that information will be used to augment the State's business intelligence and data analytics capabilities to prevent, detect, and reduce unemployment insurance fraud, improper payments, overpayments, and other programmatic irregularities. (2015-238, s. 1; 2017-57, s. 14.1(v).)