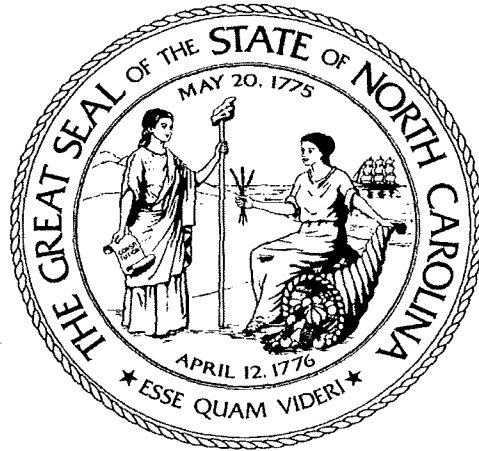


# NORTH CAROLINA GENERAL ASSEMBLY



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## JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE

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### REPORT TO THE 2018 SESSION of the 2017 GENERAL ASSEMBLY OF NORTH CAROLINA

MAY 2, 2018

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## TRANSMITTAL LETTER

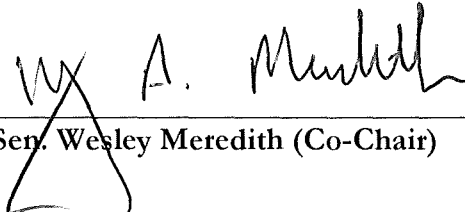
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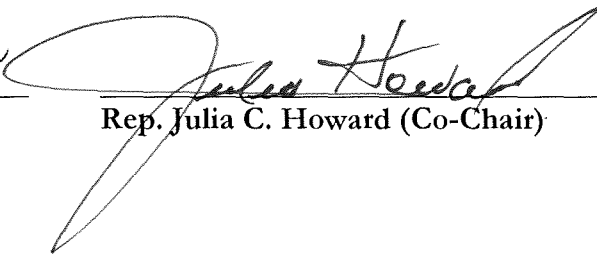
May 2, 2018

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TO THE MEMBERS OF THE 2018 REGULAR SESSION  
OF THE 2017 GENERAL ASSEMBLY

The JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON  
UNEMPLOYMENT INSURANCE, respectfully submits the following report to the  
2018 Regular Session of the 2017 General Assembly.

  
\_\_\_\_\_  
Sen. Wesley Meredith (Co-Chair)

  
\_\_\_\_\_  
Rep. Julia C. Howard (Co-Chair)

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# COMMITTEE PROCEEDINGS

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The Joint Legislative Oversight Committee on Unemployment Insurance met 7 times after the 2017 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The General Assembly created the Committee as part of its unemployment insurance reform legislation in 2013, S.L. 2013-2. Appendix B of the Report contains a copy of the Committee's authorization found in Article 12R of Chapter 120 of the General Statutes. Appendix A lists the current membership of the Committee. The authorization charges the Committee to study the unemployment insurance (UI) program and the workforce development program, review developing issues for the UI system, and monitor the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund.

This interim the Committee discussed the following topics and issues:

- Unemployment Trust Fund balance
- Update on SCUBI (Southeastern Consortium Unemployment Benefits Initiative) implementation
- Unemployment insurance benefit levels in NC
- Legislative requests from the Division of Employment Security (DES)

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## FINDINGS AND RECOMMENDATIONS

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The Committee voted at its final meeting to recommend the Legislative Proposal. The Proposal would make the following changes to the unemployment insurance (UI) system:

- Exclude direct sellers from the definition of employment for UI.
- Delay the effective date for a requirement that employers respond to UI claims in 10 days until January 1, 2019.
- Reduce the number of job contacts required for UI to 3 contacts per week.
- Require electronic filing of employer's quarterly report if the employer has 10 or more employees (currently, employer with 25 or more employees must file electronically).
- Create a procedure to withdraw a UI claim for good cause.
- Restore an exclusion from the definition of employment for State and local government interns.

The Legislative Proposal and a Summary of the Proposal appear in Appendix C of this Report.



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## COMMITTEE MEMBERSHIP

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2017-2018

**President Pro Tempore of the Senate**  
**Appointments:**

Sen. Wesley Meredith (Co-Chair)

Sen. Ben Clark

Sen. Paul Newton

Sen. Andy Wells

**Speaker of the House of Representatives**  
**Appointments:**

Rep. Julia C. Howard (Co-Chair)

Rep. Harry Warren (Vice-Chair)

Rep. Dean Arp

Rep. Dana Bumgardner

Rep. William D. Brisson (Advisory Member)

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## COMMITTEE CHARGE/STATUTORY AUTHORITY

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### Article 12R.

Joint Legislative Oversight Committee on Unemployment Insurance.

#### **§ 120-70.155. (Expires July 1, 2023) Creation and membership.**

(a) The Joint Legislative Oversight Committee on Unemployment Insurance is established. The Committee consists of eight members appointed as follows:

- (1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(b) The members serve for a term of two years. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment.

#### **§ 120-70.156. (Expires July 1, 2023) Purpose and powers of Committee.**

(a) Purpose. – The Joint Legislative Oversight Committee on Unemployment Insurance is directed to study and review all unemployment insurance matters, workforce development programs, and reemployment assistance efforts of the State. The following duties and powers, which are enumerated by way of illustration, shall be liberally construed to provide maximum review by the Committee of these matters:

- (1) Study the unemployment insurance laws of North Carolina and the administration of those laws.
- (2) Review the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer.
- (3) Monitor the payment of the debt owed by the Unemployment Trust Fund to the federal government.
- (4) Review and determine the adequacy of the balances in the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund.
- (5) Study the workforce development programs and reemployment assistance efforts of the Division of Workforce Solutions of the Department of Commerce.
- (6) Call upon the Department of Commerce to cooperate with it in the study of the unemployment insurance laws and the workforce development efforts of the State.

(b) The Committee may report its findings and recommendations to any regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

**§ 120-70.157. (Expires July 1, 2023) Organization of Committee.**

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. The Joint Legislative Oversight Committee on Unemployment Insurance may meet upon the joint call of the cochairs. A quorum of the Committee is five members.

The Committee may meet in the Legislative Building or the Legislative Office Building. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

**§ 120-70.158. (Expires July 1, 2023) Sunset.**

This Article expires July 1, 2023.

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**LEGISLATIVE PROPOSAL**

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

BILL DRAFT 2017-TMxfz-9A [v.1]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
05/01/2018 11:56:17 AM

Short Title: UI Technical Changes.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES  
3 TO THE UNEMPLOYMENT INSURANCE LAWS.  
4 The General Assembly of North Carolina enacts:

5  
6 **PART I. EXCLUDE DIRECT SELLERS FROM THE DEFINITION OF EMPLOYMENT**  
7 **FOR UNEMPLOYMENT INSURANCE**

8 **SECTION 1.(a)** G.S. 96-1(b)(12) reads as rewritten:

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

11 a. Additions. – The term includes service to a governmental unit, a  
12 nonprofit organization, or an Indian tribe as described in sections  
13 3306(c)(7) and 3306(c)(8) of the Code.

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

- 15 1. Service performed by an independent contractor.
- 16 2. Service performed for a governmental entity or nonprofit  
17 organization under sections 3309(b) and 3309(c) of the Code.
- 18 3. Service by one or more of the following individuals if the  
19 individual is authorized to exercise independent judgment and  
20 control over the performance of the work and is compensated  
21 solely by way of commission:
  - 22 A. A real estate broker, as defined in G.S. 93A-2.
  - 23 B. A securities salesman, as defined in G.S. 78A-2.
- 24 4. Service performed by a direct seller, as defined in section  
25 3508(b)(2) of the Code. The term does not include a person  
26 defined in section 3508(b)(2)(A)(iii) of the Code.
- 27 5. Service performed by an intern for a governmental unit."

28 **SECTION 1.(b)** This section becomes effective July 1, 2018, applies to claims for  
29 benefits filed on or after that date, and applies to tax calculations on or after that date.  
30

31 **PART II. DELAY THE EFFECTIVE DATE FOR A REQUIREMENT THAT**  
32 **EMPLOYERS RESPOND TO UNEMPLOYMENT INSURANCE CLAIMS IN 10 DAYS**

33 **SECTION 2.** Section 3.2(b) of S.L. 2017-8, as amended by Section 6 of S.L.  
34 2017-203, reads as rewritten:

35 "SECTION 3.2.(b) This section becomes effective July 1, 2018, January 1, 2019, applies to  
36 claims for benefits filed on or after that date, and applies to tax calculations on or after that date."

1  
2 **PART III. REDUCE THE NUMBER OF JOB CONTACTS PER WEEK REQUIRED**  
3 **FOR UNEMPLOYMENT INSURANCE**

4 **SECTION 3.(a)** G.S. 96-14.9(e) reads as rewritten:

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

- 7 (1) The individual is registered for employment services, as required by the  
8 Division.  
9 (2) The individual has engaged in an active search for employment that is  
10 appropriate in light of the employment available in the labor market and the  
11 individual's skills and capabilities.  
12 (3) The individual has made at least ~~five~~three job contacts with potential  
13 employers during the week.  
14 (4) The individual has maintained a record of the individual's work search efforts.  
15 The record must include the potential employers contacted, the method of  
16 contact, and the date contacted. The individual must provide the record to the  
17 Division upon request."

18 **SECTION 3.(b)** This section becomes effective July 1, 2018, applies to claims for  
19 benefits filed on or after that date, and applies to tax calculations on or after that date.  
20

21 **PART IV. REQUIRE ELECTRONIC FILING OF EMPLOYER'S QUARTERLY**  
22 **REPORT IF THE EMPLOYER HAS 10 OR MORE EMPLOYEES**

23 **SECTION 4.(a)** G.S. 96-9.15(d) reads as rewritten:

24 "(d) **Form of Report.** – An employer must complete the tax form prescribed by the  
25 Division. An employer or an agent of an employer that reports wages for at least ~~25~~10 employees  
26 must file the portion of the "Employer's Quarterly Tax and Wage Report" that contains the name,  
27 social security number, and gross wages of each employee in an electronic format prescribed by  
28 the Division. For failure of an employer to comply with this subsection, the Division must assess  
29 a penalty of twenty-five dollars (\$25.00). For failure of an agent of an employer to comply with  
30 this subsection, the Division may deny the agent the right to report wages and file reports for that  
31 employer for a period of one year following the calendar quarter in which the agent filed the  
32 improper report. The Division may reduce or waive a penalty for good cause shown."

33 **SECTION 4.(b)** This section becomes effective January 1, 2019.  
34

35 **PART V. CREATE A PROCEDURE TO ALLOW WITHDRAWAL OF CLAIMS FOR**  
36 **GOOD CAUSE**

37 **SECTION 5.(a)** G.S. 96-15(b)(1) reads as rewritten:

- 38 "(b) (1) **Initial Determination.** – A representative designated by the Division shall  
39 promptly examine the claim and shall determine whether or not the claim is  
40 valid. If the claim is determined to be not valid for any reason other than lack  
41 of base period earnings, the claim shall be referred to an Adjudicator for a  
42 decision as to the issues presented. If the claim is determined to be valid, a  
43 monetary determination shall be issued showing the week with respect to  
44 when benefits shall commence, the weekly benefit amount payable, and the  
45 potential maximum duration thereof. The claimant shall be furnished a copy  
46 of such monetary determination showing the amount of wages paid him by  
47 each employer during his base period and the employers by whom such wages  
48 were paid, his benefit year, weekly benefit amount, and the maximum amount  
49 of benefits that may be paid to him for unemployment during the benefit year.  
50 When a claim is not valid due to lack of earnings in his base period, the  
51 determination shall so designate. The claimant shall be allowed 10 days from

1 the earlier of mailing or delivery of his monetary determination to him within  
2 which to protest his monetary determination and upon the filing of such  
3 protest, unless said protest be satisfactorily resolved, the claim shall be  
4 referred to the Assistant Secretary or designee for a decision as to the issues  
5 presented. All base period employers, as well as the most recent employer of  
6 a claimant on a temporary layoff, shall be notified upon the filing of a claim  
7 which establishes a benefit year.

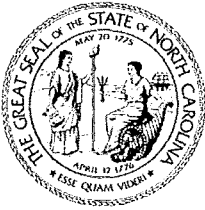
8 No claim for benefits may be withdrawn by a claimant except upon the  
9 filing of a notice of withdrawal within 10 days from the earlier of mailing or  
10 delivery of his monetary determination to him and a finding of good cause by  
11 the Assistant Secretary or designee.

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

19 **SECTION 5.(b)** This section becomes effective July 1, 2018, applies to claims for  
20 benefits filed on or after that date, and applies to tax calculations on or after that date.

21 **PART VI. EFFECTIVE DATE**

22 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes  
23 law.  
24



# Bill Draft 2017-TMxfz-9A: UI Technical Changes.

2017-2018 General Assembly

<b>Committee:</b>	Joint Legislative Oversight Committee on Unemployment Insurance	<b>Date:</b>	May 2, 2018
<b>Introduced by:</b>		<b>Prepared by:</b>	Greg Roney Staff Attorney
<b>Analysis of:</b>	2017-TMxfz-9A		

**OVERVIEW:** *The bill draft would make the following changes to the unemployment insurance (UI) system:*

- *Exclude direct sellers from the definition of employment for UI.*
- *Restore an exclusion from the definition of employment for state and local government interns.*
- *Delay the effective date for a requirement that employers respond to UI claims in 10 days until January 1, 2019.*
- *Reduce the number of job contacts required for UI to 3 contacts per week.*
- *Require electronic filing of employer's quarterly report if the employer has 10 or more employees (currently, employer with 25 or more employees must file electronically).*
- *Create a procedure to withdraw a UI claim for good cause.*

### BILL ANALYSIS AND CURRENT LAW:

Section	Bill Analysis and Current Law	Effective Date
1	<p>Section 1 would exclude direct sellers from State UI coverage, conforming to the federal treatment of direct sellers.</p> <p>Under current State law, the State UI system generally covers employees and excludes independent contractors. An employer-employee relationship is determined under the "usual common law rules applicable in determining the employer-employee relationship." I.R.C. § 3121(d)(2). Individuals representing companies that sell goods and services directly to consumers (e.g., Tupperware, Avon, Mary Kay) could be employees or independent contractors depending on the level of control exercised by the company. The State UI system currently excludes some groups of workers by statute, such as real estate brokers and securities salesmen.</p> <p>Under federal law, individuals working for direct sellers are not treated as employees (called "statutory non-employees") for federal unemployment tax (FUTA). I.R.C. § 3508. Federal law defines three primary requirements as follows: (1) engaged in the trade or business of selling consumer products in the home or otherwise than in a permanent retail establishment; (2) substantially all the remuneration for the performance</p>	7/1/2018

Karen Cochrane-Brown  
Director

2017-TMxfz-9A-SMTM-72-v-1

Legislative Analysis  
Division  
919-733-2578



# Draft

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	of the services is directly related to sales or other output rather than to the number of hours worked; and (3) the written contract between the individual and the direct seller provides that the individual will not be treated as an employee.	
1	Section 1 would restore an exclusion from the definition of employment for state and local government interns. Former G.S. 96-8(5)(p) excluded UI coverage for interns working for state or local government. The exclusion was inadvertently deleted by the unemployment insurance reform legislation in 2013, S.L. 2013-2.	7/1/2018
2	<p>Section 2 would delay the effective date until January 1, 2019 for a requirement that employers respond to unemployment insurance claims in 10 days. The effective date is currently July 1, 2018.</p> <p>Section 3.2(a) of S.L. 2017-8 amended G.S. 96-15(b)(2) to reduce the time period for an employer to respond to an unemployment insurance claim. Before S.L. 2017-8, an employer had 14 days. S.L. 2017-8 reduced the time period to 10 days effective October 1, 2017. Section 6 of S.L. 2017-203 delayed the effective date until July 1, 2018. The bill draft delays the effective date again until January 1, 2019.</p> <p>The effective date has been delayed to allow the Department of Commerce's Division of Employment Security (DES) to implement a computerized system, called SCUBI (Southeastern Consortium Unemployment Benefits Initiative), to allow electronic filing of the employer's response.</p>	When law
3	Section 3 would reduce the number of job contacts that a UI claimant must make per week to 3. Under current law, 5 job contacts per week are required. Before 2016, 2 job contacts per week were required.	7/1/2018
4	Section 4 would require electronic filing of employer's quarterly report if the employer has 10 or more employees. Current law requires electronic filing if the employer has 25 or more employees.	1/1/2019
5	Section 5 would establish a statutory procedure for a UI claimant to withdraw the claim for UI benefits. A claim for UI benefits can be withdrawn within 10 days from the notice of the claimant's monetary determination and after a finding of good cause by DES.	7/1/2018

**EFFECTIVE DATE:** The effective date for each section appears in the table above.