

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 6\*

Short Title: UI Fund Solvency & Program Changes. (Public)

Sponsors: Senators Rucho, Rabon, Brock (Primary Sponsors); Apodaca, Bingham, Brown, Brunstetter, Goolsby, Hise, Hunt, Meredith, Pate, Randleman, Tillman, and Wade.

Referred to: Finance.

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO ADDRESS THE UNEMPLOYMENT INSURANCE DEBT AND TO FOCUS NORTH CAROLINA'S UNEMPLOYMENT INSURANCE PROGRAM ON PUTTING CLAIMANTS BACK TO WORK.

The General Assembly of North Carolina enacts:

**SECTION 1.** Congress enacted the American Taxpayer Relief Act of 2012 and the President signed it into law on January 2, 2013. That legislation made changes to the tax laws and to the unemployment insurance laws. The General Assembly acknowledges that it needs to review and analyze the impact of those changes on North Carolina's tax laws and unemployment insurance laws, and based upon that analysis the General Assembly may consider further changes to the tax laws and unemployment insurance laws of North Carolina.

**SECTION 2.(a)** G.S. 96-5 reads as rewritten:

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

(a) ~~Special Fund. – There is hereby created in the State treasury a special fund to be known as the~~ The Employment Security Administration Fund is created as a special fund. ~~Fund. All moneys which are deposited or paid into this fund shall be continuously available to the Secretary for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. The Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter. The fund shall consist~~ consists of the following:

- (1) ~~all moneys~~ Moneys appropriated by this State, ~~all moneys~~ State.
- (2) Moneys received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for ~~such purpose,~~ the administration of this Chapter.
- (3) ~~and shall also include any moneys~~ Moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to ~~such agency, any amounts~~ the agency.



1           (4) Moneys received pursuant to any surety bond or insurance policy or from  
2 other sources for losses sustained by the Employment Security  
3 Administration Fund or by reason of damage to equipment or supplies  
4 purchased from moneys in ~~such fund, and the fund.~~

5           (5) ~~proceeds~~ Proceeds realized from the sale or disposition of any ~~such~~  
6 equipment or supplies which may no longer be necessary for the proper  
7 administration of this ~~Chapter. Provided, any~~ Chapter. interest ~~Interest~~  
8 collected on contributions and/or penalties collected pursuant to this Chapter  
9 shall be paid into the Special Employment Security Administration Fund  
10 created by subsection (c) of this section. All moneys in this fund shall be  
11 deposited, administered, and disbursed in the same manner and under the  
12 same conditions and requirements as is provided by law for other special  
13 funds in the State treasury, and shall be maintained in a separate account on  
14 the books of the State treasury. ~~The State Treasurer shall be liable on his~~  
15 ~~official bond for the faithful performance of his duties in connection with the~~  
16 ~~Employment Security Administration Fund provided for under this Chapter.~~  
17 ~~Such liability on the official bond shall be effective immediately upon the~~  
18 ~~enactment of this provision, and such liability shall exist in addition to any~~  
19 ~~liability upon any separate bond existent on the effective date of this~~  
20 ~~provision, or which may be given in the future.~~ All sums recovered on any  
21 surety bond for losses sustained by the Employment Security Administration  
22 Fund shall be deposited in ~~said~~ the fund.

23           (a1) Use of Funds. – The moneys in the Employment Security Administration Fund are  
24 continuously available to the Secretary for expenditure in accordance with the provisions of  
25 this Chapter. All moneys in this fund that are received from the federal government or any  
26 agency thereof or that are appropriated by this State for the purpose described in G.S. 96-20  
27 may be expended solely for the purposes and in the amounts found necessary by the Secretary  
28 of Labor for the proper and efficient administration of this Chapter.

29           The Secretary is authorized to requisition and receive from its account in the unemployment  
30 trust fund in the treasury of the United States of America any moneys standing to its credit in  
31 the fund that are permitted by federal law to be used for administering this Chapter and to  
32 expend the moneys for such purpose, without regard to a determination of necessity by a  
33 federal agency.

34           (b) Replacement of Funds Lost or Improperly Expended. – If any moneys received  
35 from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered  
36 balances in the Employment Security Administration Fund or any moneys granted to this State  
37 pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this  
38 State or its political subdivisions and matched by such moneys granted to this State pursuant to  
39 the provisions of the Wagner-Peyser Act, Act are found by the Secretary of Labor, because of  
40 any action or contingency, to have been lost or expended for purposes other than, or in amounts  
41 in excess of those found necessary by the Secretary of Labor, Labor to have been expended for  
42 purposes other than for the proper administration of this Chapter, it is the policy of this State  
43 that such moneys, not available from the Special Employment Security Administration Fund  
44 established by subsection (c) of this section, shall be replaced by moneys appropriated for such  
45 purpose from the general funds of this State to the Employment Security Administration Fund  
46 for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a  
47 finding by the Secretary of Labor, moneys must be replaced. Upon such a finding by the  
48 Secretary of Labor and notification from the Secretary of the amount that needs to be replaced,  
49 the Division shall must promptly pay from the Special Employment Security Administration  
50 Fund such sum if available in such the fund; if the sum is not available in the fund, it shall must  
51 promptly report to the Governor the amount required for such replacement to the Governor and

1 the Governor shall, at the earliest opportunity, shall submit to the legislature a request for the  
2 appropriation of such ~~amount~~ amount from the General Fund.

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

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

41 (d) The other provisions of this section and G.S. 96-6, to the contrary notwithstanding,  
42 the Secretary is authorized to requisition and receive from its account in the unemployment  
43 trust fund in the treasury of the United States of America, in the manner permitted by federal  
44 law, such moneys standing to its credit in such fund, as are permitted by federal law to be used  
45 for expense of administering this Chapter and to expend such moneys for such purpose, without  
46 regard to a determination of necessity by a federal agency. The State Treasurer shall be  
47 treasurer and custodian of the amounts of money so requisitioned. Such moneys shall be  
48 deposited, administered, and disbursed in the same manner and under the same conditions and  
49 requirements as are provided by law for other special funds in the State treasury.

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

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

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

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

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

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

40 ~~The use of funds from the Worker Training Trust Fund, for the purposes set out in the~~  
41 ~~above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations~~  
42 ~~Act. Funds appropriated from the Worker Training Trust Fund that are unexpended and~~  
43 ~~unencumbered at the end of the fiscal year for which they are appropriated shall revert to the~~  
44 ~~State treasury to the credit of the Worker Training Trust Fund in accordance with~~  
45 ~~G.S. 143C-1-2.~~

46 (g) ~~Notwithstanding subsection (f) of this section, the State Treasurer may invest not~~  
47 ~~more than a total of twenty five million dollars (\$25,000,000) of funds in the Employment~~  
48 ~~Security Reserve Fund established under subsection (f) of this section in securities issued by~~  
49 ~~the North Carolina Technological Development Authority, Inc., the proceeds for which are~~  
50 ~~directed to support investment in venture capital funds. The State Treasurer shall report to the~~

1 ~~Joint Legislative Commission on Governmental Operations and the Fiscal Research Division~~  
 2 ~~on October 1 and March 1 of each fiscal year on investments made pursuant to this subsection."~~

3 **SECTION 2.(b)** Article 1 of Chapter 96 of the General Statutes is amended by  
 4 adding a new section to read:

5 **"§ 96-5.1. Special Employment Security Administration Fund.**

6 (a) Special Fund. – The Special Employment Security Administration Fund is created  
 7 as a special fund. The fund consists of all interest and penalties, regardless of when the same  
 8 became payable, collected from employers under the provisions of this Chapter as well as any  
 9 appropriations of funds by the General Assembly.

10 (b) Use of Funds. – The moneys in the Special Employment Security Administration  
 11 Fund may not be expended or available for expenditure in lieu of federal funds made available  
 12 to the Division of Employment Security for the administration of this Chapter. The moneys in  
 13 the fund may be used for one or more of the following purposes:

14 (1) The payment of costs and charges of administration that are found by the  
 15 Secretary of Labor to be improper and valid charges payable out of any  
 16 funds in the Employment Security Administration Fund received from any  
 17 source.

18 (2) The temporary stabilization of federal funds cash flow and security for loans  
 19 from the federal Unemployment Insurance Fund.

20 (3) Refunds of interest, to the extent the interest was deposited in this fund. In  
 21 those cases where an employer takes credit for a previous overpayment of  
 22 interest on contributions, the amount of credit taken for the overpayment of  
 23 interest must be reimbursed to the Unemployment Insurance Fund from the  
 24 Special Employment Security Administration Fund."

25 **SECTION 2.(c)** G.S. 96-6 reads as rewritten:

26 **"§ 96-6. Unemployment Insurance Fund.**

27 (a) ~~Establishment and Control-Use. – The Unemployment Insurance Fund is created as~~  
 28 ~~a special fund. There is hereby established as a special fund, separate and apart from all public~~  
 29 ~~moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered~~  
 30 ~~by the Division's Employment Insurance Section. The Division of Employment Security in the~~  
 31 ~~Department of Commerce shall administer the fund exclusively for the purposes of this~~  
 32 ~~Chapter. This fund shall consist of:~~ consists of the following sources of revenue:

33 (1) All contributions collected under this Chapter, together with any interest  
 34 earned upon any moneys in the fund; fund.

35 (2) Any property or securities acquired through the use of moneys belonging to  
 36 the fund; fund.

37 (3) All earnings of such property or securities; securities.

38 (4) Any moneys received from the federal unemployment account in the  
 39 unemployment trust fund in accordance with Title XII of the Social Security  
 40 Act as amended; amended.

41 (5) All moneys credited to this State's account in the Unemployment Trust Fund  
 42 pursuant to section 903 of Title IX of the Social Security Act, as amended,  
 43 (U.S.C.A. Title 42, sec. 1103 (a));).

44 (6) All moneys paid to this State pursuant to section 204 of the Federal-State  
 45 Extended Unemployment Compensation Act of 1970; 1970.

46 (7) Reimbursement payments in lieu of contributions.

47 ~~All moneys in the fund shall be commingled and undivided.~~

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

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

4 (b1) Receipt of Funds. – ~~All~~ The Division of Employment Security must immediately  
5 forward all moneys payable to the Unemployment Insurance Fund fund, upon receipt thereof  
6 by the Division, shall be forwarded immediately to the treasurer to the Treasurer – ~~who shall~~  
7 immediately deposit them in for deposit into the clearing account. Refunds payable pursuant to  
8 G.S. 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as  
9 provided in G.S. 143B-426.40G under the requisition of the Division. After clearance thereof,  
10 all other ~~The moneys in the clearing account shall~~ must be immediately deposited with the  
11 secretary of the treasury of the United States of America to the credit of the account of this  
12 State in the unemployment trust fund, established and maintained pursuant to section 904 of the  
13 Social Security Act, as amended, any provision of law in this State relating to the deposit,  
14 administration, release, or disbursement of moneys in the possession or custody of this State to  
15 the contrary notwithstanding, as amended. ~~The benefit account shall consist~~ consists of all  
16 moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the  
17 clearing and benefit accounts may be deposited ~~by the treasurer, under the direction of the~~  
18 ~~Secretary,~~ in any bank or public depository in which general funds of the State may be  
19 deposited, but no public deposit insurance charge or premium ~~shall~~ may be paid ~~out of from~~  
20 the fund. ~~The State Treasurer shall be liable on his official bond for the faithful performance of his~~  
21 ~~duties in connection with the unemployment insurance fund provided for under this Chapter.~~  
22 ~~Such liability on the official bond shall be effective immediately upon the enactment of this~~  
23 ~~provision, and such liability~~ Liability on the State Treasurer's official bond shall exist ~~exists~~ in  
24 addition to any liability upon any separate ~~bond existent on the effective date of this provision,~~  
25 ~~or which may be given in the future.~~ bond for the faithful performance of the Treasurer's duties  
26 under this section. All sums recovered on any surety bond for losses sustained by the  
27 unemployment insurance fund ~~shall~~ must be deposited ~~in said fund, in~~ the UI Fund.

28 (c) Requisitioning Money. – ~~Moneys shall be requisitioned from this~~ The Division must  
29 requisition from the State's account in the unemployment trust fund only the amounts needed to  
30 pay solely for the payment of benefits (including benefits, including the State's portion of any  
31 extended benefits) and in benefits, and overpayments of contributions as provided in  
32 G.S. 96-19.30. accordance with regulations prescribed by the Secretary. The Division shall,  
33 from time to time, may requisition from the unemployment trust fund ~~such amounts, not~~  
34 ~~exceeding the accounts standing to its account therein, as it deems necessary a sufficient~~  
35 amount for the payment of benefits for a reasonable future period. Upon receipt ~~thereof the~~  
36 ~~treasurer shall~~ of the requisitioned amount, the State Treasurer must deposit such moneys ~~the~~  
37 funds in the benefit account ~~and shall~~ to be used to pay all warrants drawn thereon on it as  
38 provided in G.S. 143B-426.40G and requisitioned by the Division for the payment of ~~benefits~~  
39 ~~solely from such benefit account, benefits.~~ Expenditures of ~~such moneys~~ funds in the benefit  
40 account and refunds from the clearing account ~~shall~~ are not be subject to approval of the  
41 ~~Budget Bureau~~ State Budget Office or any provisions of law requiring specific appropriations or  
42 other formal release by State officers of money in their custody. All warrants issued upon the  
43 treasurer for the payment of benefits and refunds ~~shall~~ must be issued as provided in  
44 G.S. 143B-426.40G as requisitioned by the Secretary, the Assistant Secretary, or a duly  
45 authorized agent of the Division for that purpose. Any balance of moneys requisitioned from  
46 the unemployment trust fund which remains unclaimed or unpaid in the benefit account after  
47 the expiration of the period for which such sums were requisitioned ~~shall either~~ must either be  
48 deducted from estimates for, and may be utilized for the payment of, benefits during  
49 succeeding periods, or, in the discretion of the Division, ~~shall~~ may be redeposited with the  
50 Secretary of the Treasury of the United States of America, to the credit of this State's account in  
51 the unemployment trust fund, ~~as provided in subsection (b) of this section.~~ fund.

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

23 (e) Benefits. – ~~Benefits shall be deemed to be~~due and payable under this Chapter  
 24 ~~only to the extent as provided in this Chapter and to the extent that from~~moneys are available  
 25 ~~therefor to the credit of the Unemployment Insurance Fund, and neither the State nor the~~  
 26 ~~Division shall be liable for any amount in excess of such sums in the Unemployment Insurance~~  
 27 ~~Fund. If the State has received an advance under~~

28 (f) ~~Any interest required to be paid on advances under Title XII of the Social Security~~  
 29 ~~Act for the payment of benefits, then the State must pay any interest required to be paid on the~~  
 30 ~~advance shall be paid in a timely manner and shall~~manner. The interest may not be paid,  
 31 ~~directly or indirectly, from amounts in the Unemployment Insurance Fund."~~

32 **SECTION 2.(d)** Article 1 of Chapter 96 of the General Statutes is amended by  
 33 adding a new section to read:

34 "**§ 96-6.1. Employment Security Reserve Fund.**

35 (a) Creation and Purpose. – The Employment Security Reserve Fund is created as a  
 36 special fund. Interest and other investment income earned by the Reserve Fund must be  
 37 credited to it. The Reserve Fund consists of the revenues derived from the tax imposed under  
 38 G.S. 96-19.34. The moneys in the Reserve Fund may only be used for the following purposes:

- 39 (1) Interest payments required on advances under Title XII of the Social  
 40 Security Act.
- 41 (2) Principal payments on advances under Title XII of the Social Security Act.
- 42 (3) Transfers to the Unemployment Insurance Fund for payment of benefits.
- 43 (4) Administrative costs for the collection of the tax.
- 44 (5) Refunds of the tax.

45 (b) Fund Capped. – The balance in the Employment Security Reserve Fund on January  
 46 1 may not exceed the greater of fifty million dollars (\$50,000,000) or the amount of interest  
 47 paid the previous September on advances under Title XII of the Social Security Act. Any  
 48 amount in the Fund that exceeds the cap must be transferred to the Unemployment Insurance  
 49 Fund."

50 **SECTION 2.(e)** This section becomes effective July 1, 2013.



- 1           (3)    American aircraft. – Defined in section 3306 of the Code.  
2           (4)    American employer. – Defined in section 3306 of the Code.  
3           (5)    American vessel. – Defined in section 3306 of the Code.  
4           (6)    Average weekly insured wage. – The weekly rate obtained by dividing the  
5           total wages reported by all insured employers by the monthly average in  
6           insured employment during the immediately preceding calendar year and  
7           further dividing the quotient obtained by 52.  
8           (7)    Base period. – The first four of the last five completed calendar quarters  
9           immediately preceding the first day of an individual's benefit year.  
10          (8)    Benefit. – Compensation payable to an individual with respect to the  
11          individual's unemployment.  
12          (9)    Benefit year. – The fifty-two week period beginning with the first day of a  
13          week with respect to which an individual first registers for work and files a  
14          valid claim for benefits. If the individual is payroll attached, the benefit year  
15          begins on the Sunday preceding the payroll week ending date. If the  
16          individual is not payroll attached, the benefit year begins on the Sunday of  
17          the calendar week with respect to which the claimant registered for work and  
18          filed a valid claim for benefits.  
19          (10)   Calendar quarter. – The period of three consecutive calendar months ending  
20          on March 31, June 30, September 30, or December 31.  
21          (11)   Claimant. – An individual who makes a claim for unemployment benefits.  
22          (12)   Code. – Defined in G.S. 105-228.90.  
23          (13)   Computation date. – August 1 of each year.  
24          (14)   Contributions. – Payments made by a person to the UI Fund.  
25          (15)   Crew leader. – An individual who meets all of the following conditions:  
26            a.    Furnishes individuals to perform agricultural labor for any other  
27            person.  
28            b.    Pays the individuals for the agricultural labor performed by them.  
29            c.    Has not entered into a written agreement with another person under  
30            which the individual is designated as an employee of the other  
31            person.  
32          (16)   Department. – The North Carolina Department of Commerce.  
33          (17)   Division. – The Department's Division of Employment Security.  
34          (18)   Electronic transfer. – A transfer of funds initiated by using an electronic  
35          terminal, a telephone, a computer, or magnetic tape to instruct or authorize a  
36          financial institution or its agent to credit or debit an account.  
37          (19)   Employee. – Defined in section 3306 of the Code. The term does not include  
38          an independent contractor.  
39          (20)   Employer. – Defined in G.S. 96-19.4.  
40          (21)   Employment. – Defined in G.S. 96-19.3.  
41          (22)   Employment security law. – Any law enacted by this State or any other state  
42          or territory or by the federal government providing for the payment of  
43          unemployment insurance benefits.  
44          (23)   Farm. – Stock, dairy, poultry, fruit, fur-bearing animal, and truck farms,  
45          plantations, ranches, nurseries, ranges, greenhouses, orchards, or other  
46          similar structure used primarily for the raising of agricultural or horticultural  
47          commodities.  
48          (24)   Farm operator. – The person responsible for the management decisions in  
49          operating an agricultural operation.  
50          (25)   Federal Unemployment Tax Act. – Chapter 23 of the Code.  
51          (26)   Full-time student. – Defined in section 3306 of the Code.

- 1           (27) Immediate family. – An individual's spouse, child, grandchild, parent, and  
2           grandparent, whether the relationship is a biological, step-, half-, or in-law  
3           relationship.  
4           (28) Indian tribe. – A tribe to which subsection (d) of section 3309 of the Code  
5           applies.  
6           (29) Localized in this State. – Service that meets one of the following conditions:  
7           a. Is performed entirely within the State.  
8           b. Is performed both within and without the State, but the service  
9           performed without the State is incidental to the individual's service  
10           within the State. For example, the individual's service without the  
11           State is temporary or transitory in nature or consists of isolated  
12           transactions.  
13           (30) Nonprofit organization. – A religious, charitable, educational, or other  
14           organization that is exempt from federal income tax and described in section  
15           501(c)(3) of the Code.  
16           (31) Permanent employment. – Employment of indefinite duration or duration of  
17           more than 30 consecutive calendar days, regardless of whether work is  
18           performed on all those days.  
19           (32) Person. – An individual, a firm, a partnership, an association, a corporation,  
20           whether foreign or domestic, a limited liability company, or any other  
21           organization or group acting as a unit.  
22           (33) Qualifying wages. – Wages earned with an employer subject to the  
23           provisions of this Chapter or other state employment security law or in  
24           federal service as defined in 5 U.S.C. Chapter 85.  
25           (34) Rail employer. – Defined in section 3322 of the Code.  
26           (35) Reemployment services. – Job search assistance and job placement services,  
27           such as counseling, testing, assessment, and providing occupational and  
28           labor market information, job search workshops, job clubs, referrals to  
29           employers, and other similar services.  
30           (36) Secretary. – The Secretary of the Department of Commerce or the Assistant  
31           Secretary in charge of the Division of Employment Security.  
32           (37) State. – Defined in section 3306 of the Code.  
33           (38) Taxable wage base. – Defined in G.S. 96-19.31.  
34           (39) UI Fund. – The Unemployment Insurance Fund established by this Chapter.  
35           (40) Unemployed. – Defined in G.S. 96-19.6.  
36           (41) Wages. – Defined in G.S. 96-19.5.

37 **"§ 96-19.3. Employment.**

38           (a) General Definition. – The term "employment" means service performed for wage or  
39           under any contract of hire, written or oral, express or implied, in which the relationship of the  
40           individual performing the service and the person for whom the service is rendered is, as to such  
41           service, the legal relationship of employer and employee.

42           (b) Service Performed in the State. – The term "employment services" includes an  
43           individual's entire service, whether performed within or without this State, if any of the  
44           following applies:

- 45           (1) The service is localized in this State.  
46           (2) The service is not localized in any state but some of the service is performed  
47           in this State, and one or more of the following applies:  
48           a. The base of operations is in this State.  
49           b. If there is no base of operations, then the place from which such  
50           service is directed or controlled is in this State.

- 1           c.       The base of operations or place from which such service is directed  
2                   or controlled is not in any state in which some part of the service is  
3                   performed, but the individual's residence is in this State.
- 4       (3)     The service, wherever performed, is within the United States or Canada and  
5                   both of the following applies:
- 6           a.       The service is not covered under the unemployment compensation  
7                   law of any other state or Canada.
- 8           b.       The place from which the service is directed or controlled is in this  
9                   State.
- 10       (4)     The service is performed outside the United States or Canada by a citizen of  
11                   the United States in the employ of an American employer and at least one of  
12                   the following applies:
- 13           a.       The employer's principal place of business in the United States is  
14                   located in this State.
- 15           b.       The employer has no place of business in the United States, but the  
16                   employer is an individual who is a resident of this State, or a  
17                   corporation that is organized under the laws of this State, or a  
18                   partnership or a trust where the number of partners or trustees who  
19                   are residents of this State is greater than the number who are  
20                   residents of any other state.
- 21           c.       The employer has elected coverage in this State, as provided in  
22                   G.S. 96-19.21.
- 23           d.       The employer has not elected coverage in any state and the employee  
24                   has filed a claim for benefits under the law of this State based on the  
25                   service provided to the employer.
- 26       (c)     Non-Applicability. – The term "employment" does not include any of the following:
- 27           (1)     Employment as defined in the Railroad Retirement Act and the Railroad  
28                   Unemployment Insurance Act.
- 29           (2)     The following services performed for a State or local governmental  
30                   employing unit or for an employing unit of an Indian tribe:
- 31           a.       An elected official.
- 32           b.       A member of a legislative body or a member of the judiciary.
- 33           c.       A member of the North Carolina National Guard.
- 34           d.       An employee serving on a temporary basis in case of fire, storm,  
35                   snow, earthquake, flood, or similar emergency. These services  
36                   include temporary emergency services compensated solely by a fixed  
37                   payment for each emergency call answered whether or not provided  
38                   for by prior agreement and training in preparation for such temporary  
39                   emergency service whether or not compensated.
- 40           e.       An employee in a policy-making or advisory position, the  
41                   performance of the duties of which ordinarily does not require more  
42                   than eight hours per week.
- 43       (3)     Service with respect to which unemployment insurance is payable under an  
44                   employment security system established by an act of Congress. The Division  
45                   may enter into agreements with the proper agencies under such act of  
46                   Congress, which agreements shall become effective 10 days after publication  
47                   thereof in the manner provided in G.S. 96-4(b) for general rules, to provide  
48                   potential rights to benefits under this Chapter, acquired rights to  
49                   unemployment insurance under act of Congress, or who have, after acquiring  
50                   potential rights to unemployment insurance, under such act of Congress,  
51                   acquired rights to benefits under this Chapter.

- 1           (4) Services performed by an individual in the employ of a son, daughter, or  
2           spouse.
- 3           (5) Services performed by a child under the age of 21 in the employ of his father  
4           or mother or of a partnership consisting only of parents of the child.
- 5           (6) Service performed by an individual during any calendar quarter for an  
6           employer as an insurance agent or as an insurance solicitor, or as a securities  
7           salesman if all such service performed during the calendar quarter by the  
8           individual for the employing unit or employer is performed for remuneration  
9           solely by way of commission.
- 10          (7) Service performed by an individual for an employing unit as a real estate  
11          agent or a real estate salesman as defined in G.S. 93A-2, provided, that the  
12          real estate agent or salesman is compensated solely by way of commission  
13          and is authorized to exercise independent judgment and control over the  
14          performance of his work.
- 15          (8) Services performed in employment as a newsboy or newsgirl selling or  
16          distributing newspapers or magazines on the street or from house to house.
- 17          (9) Service covered by an election duly approved by the agency charged with  
18          the administration of any other state or federal employment security law in  
19          accordance with an arrangement pursuant to subsection (l) of G.S. 96-4  
20          during the effective period of such election.
- 21          (10) Casual labor not in the course of the employing unit's trade or business.
- 22          (11) Service in any calendar quarter in the employ of any organization exempt  
23          from income tax under the provisions of section 501(a) of the Internal  
24          Revenue Code, other than an organization described in section 401(a) of the  
25          Internal Revenue Code, or under section 521 of the Internal Revenue Code,  
26          if the remuneration for the service is less than fifty dollars (\$50.00).
- 27          (12) Service in the employ of a school, college, or university, if the service is  
28          performed by one of the following:
- 29            a. A student who is enrolled and is regularly attending classes at such  
30            school, college, or university.
- 31            b. The spouse of a student described in this subdivision, if the spouse is  
32            advised, at the time the spouse commences to perform such service,  
33            both of the following:
- 34                1. The employment of the spouse to perform service is provided  
35                under a program to provide financial assistance to such  
36                student by such school, college, or university.
- 37                2. The employment will not be covered by any program of  
38                unemployment insurance.
- 39          (13) Service performed by an individual for an employer as an integral part of an  
40          academic program that combines academic instruction with work  
41          experience. This subdivision only applies to service performed by an  
42          individual who is enrolled as a student in a full-time program at a nonprofit  
43          or public educational institution that maintains a regular faculty and  
44          curriculum and has a regularly organized body of students in attendance at  
45          the place where its educational activities occur and who is providing the  
46          service as part of an academic program taken for credit at the institution. The  
47          institution must certify to the employer that the service is an integral part of  
48          an academic program that the individual is taking for credit at the institution.  
49          This subdivision does not apply to service performed in a program  
50          established for or on behalf of an employer or group of employers.

- 1           (14) Services performed in the employ of a church or convention or association  
2 of churches, or an organization that is operated primarily for religious  
3 purposes and that is operated, supervised, controlled or principally supported  
4 by a church or convention or association of churches.
- 5           (15) Services performed by a duly ordained, commissioned, or licensed minister  
6 of a church in the exercise of his ministry or by a member of a religious  
7 order in the exercise of duties required by such order.
- 8           (16) Services performed in a facility conducted for the purpose of carrying out a  
9 program of rehabilitation for individuals whose earning capacity is impaired  
10 by age or physical or mental deficiency or injury or providing remunerative  
11 work for individuals who because of their impaired physical or mental  
12 capacity cannot be readily absorbed in the competitive labor market by an  
13 individual receiving such rehabilitation or remunerative work.
- 14           (17) Services performed as a part of an unemployment work-relief or  
15 work-training program assisted or financed in whole or in part by any federal  
16 agency, an agency of a state or political subdivision thereof, or an Indian  
17 tribe, by an individual receiving the work relief or work training, unless a  
18 federal law, rule, or regulation mandates unemployment insurance coverage  
19 to individuals in a particular work-relief or work-training program.
- 20           (18) Any of the following services performed by an inmate:  
21           a. Services performed for a hospital in a State prison or other State  
22 correctional institution.  
23           b. Services performed as part of a work-release program.  
24           c. Services performed at the custodial or penal institution.
- 25           (19) Services performed for a hospital by a patient in that hospital.
- 26           (20) Services performed by an individual on a boat engaged in catching fish or  
27 other forms of aquatic animal life under a remuneration arrangement  
28 described in this subdivision. In order to preserve the State's right to collect  
29 State unemployment taxes for which a credit against federal unemployment  
30 taxes may be taken for contributions paid into the State unemployment  
31 insurance fund, this subdivision does not apply, with respect to any  
32 individual, to service during any period for which an assessment for federal  
33 unemployment taxes is made by the Internal Revenue Service pursuant to  
34 the Federal Unemployment Tax Act which assessment becomes a final  
35 determination. Services performed by an individual for remuneration based  
36 upon the amount of the boat's catch of fish or other forms of aquatic animal  
37 life or a share of the proceeds from the sale of such catch rather than cash.  
38 This subdivision only applies if the operating crew of a boat in the fishing  
39 operation is normally made up of fewer than 10 individuals. In the case of a  
40 fishing operation involving more than one boat, the remuneration may be  
41 based upon the catch of all the boats.
- 42           (21) Services performed by a full-time student in the employ of an organized  
43 camp for less than 13 calendar weeks in the calendar year if the camp meets  
44 one of the following conditions:  
45           a. It did not operate for more than seven months in the calendar year  
46 and did not operate for more than seven months in the preceding  
47 calendar year.  
48           b. It had average gross receipts for any six months in the preceding  
49 calendar year which were not more than thirty-three and one-third  
50 percent (33 1/3%) of its average gross receipts for the other six  
51 months in the preceding calendar year.

1           (22) Services performed as a resident by an individual who has completed a  
2 four-year course in medical school chartered or approved pursuant to State  
3 law, provided that the service is performed for and while in the employment  
4 of a nonprofit organization created to provide medical services to a targeted  
5 socio-economically disadvantaged group within this State.

6           (23) Services performed by an individual who is an alien having residence in a  
7 foreign country that the individual has no intention of abandoning, who  
8 possesses a valid J-1 Visa, and who is present in the State for a period of six  
9 months or less pursuant to the provisions of 8 U.S.C. §  
10 1101(a)(15)(F)(J)(M)(Q).

11           (d) American Vessel or Aircraft. – The term employment includes a service of whatever  
12 nature performed by an individual for an employing unit on or in connection with an American  
13 vessel under a contract of service that is entered into within the United States or during the  
14 performance of which the vessel touches at a port in the United States, if the individual is  
15 employed on and in connection with the vessel when outside the United States. The service  
16 must be performed on or in connection with the operations of an American vessel operating on  
17 navigable waters within or within and without the United States and the operations must be  
18 ordinarily and regularly supervised, managed, directed, and controlled from an operating office  
19 maintained by the employing unit in this State.

20           The term does not include service performed by an individual on or in connection with a  
21 vessel or aircraft that is not an American vessel or an American aircraft if the individual is  
22 performing services on and in connection with the vessel or aircraft when outside the United  
23 States. The term does not include service performed by an individual as an officer or member  
24 of the crew of a vessel while the vessel is engaged in the catching, taking, harvesting,  
25 cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other  
26 aquatic forms of animal and vegetable life, including service performed by the individual as an  
27 ordinary incident to any such activity, unless both of the following conditions are met:

28           (1) The service is performed in connection with the catching or taking of salmon  
29 or halibut for commercial purposes.

30           (2) The service is performed on or in connection with a vessel of more than 10  
31 net tons, as determined in the manner provided for determining the  
32 registered tonnage of merchant vessels under the laws of the United States.

33           (e) American Aircraft. – The term employment includes any service of whatever nature  
34 performed by an individual for an employing unit on or in connection with an American  
35 aircraft under a contract of service that is entered into within the United States or during the  
36 performance of which and while the employee is employed on the aircraft it touches at a port in  
37 the United States, if such individual is employed on and in connection with such aircraft when  
38 outside the United States. The service must be performed on or in connection with the  
39 operations of an American aircraft and such operations must be ordinarily and regularly  
40 supervised, managed, directed, and controlled from an operating office maintained by the  
41 employing unit in this State.

42 **"§ 96-19.4. Employer.**

43           (a) Generally. – The term "employer" means an employing unit who paid wages to an  
44 individual to perform employment service and who meets one of the following conditions:

45           (1) Employed one or more individuals within the current or preceding calendar  
46 year for some portion of a day in each of 20 different calendar weeks within  
47 the calendar year.

48           (2) Paid wages of one thousand five hundred dollars (\$1,500) or more in any  
49 calendar quarter in either the current or preceding calendar year.

50           (b) Agricultural Labor. – With agricultural labor, the employer may be the crew leader  
51 or the farm operator. A crew leader may be the employer if the crew leader holds a valid

1 certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act  
2 or if substantially all the members of the crew operate or maintain tractors, mechanized  
3 harvesting or crop dusting equipment, or any other mechanized equipment provided by the  
4 crew leader. A farm operator is the employer of a worker hired by the farm operator, regardless  
5 of whether the worker is assigned to work with a crew or under the leadership of the crew  
6 leader. The farm operator is deemed to be the employer of all the workers when the crew leader  
7 does not qualify as an employer.

8 For agricultural labor, the term "employer" means an employing unit who paid wages to an  
9 individual to perform agricultural labor and who meets one of the following conditions:

10 (1) Employed 10 or more individuals in agricultural labor within the current or  
11 preceding calendar year for some portion of a day in each of 20 different  
12 calendar weeks within the calendar year.

13 (2) Paid wages of twenty thousand dollars (\$20,000) or more in any calendar  
14 quarter in either the current or preceding calendar year.

15 (c) Domestic Service. – The term "employer" means an employing unit who paid wages  
16 to an individual of one thousand dollars (\$1,000) or more in any calendar quarter in the current  
17 or preceding calendar year for domestic service in a private home, local college club, or local  
18 chapter of a college fraternity or sorority.

19 (d) Other Employers. – The term "employer" means any one or more of the following  
20 employing units:

21 (1) American vessel. – An employing unit that meets at least one other  
22 description of an employer in this section and that maintains an operating  
23 office within this State from which the operations of an American vessel  
24 operating on navigable waters within or within and without the United States  
25 are ordinarily and regularly supervised, managed, directed, and controlled.

26 (2) Election. – A person that has elected to become fully subject to this Chapter  
27 under G.S. 96-19.21.

28 (3) Acquisition. – An employing unit who has acquired part or all of another  
29 employing unit who at the time of acquisition was an employer described in  
30 this section.

31 (4) Governmental. – Any employing unit of the State or a local governmental  
32 unit. A governmental entity is not an employer by reason of hiring an intern.

33 (5) Nonprofit organization. – An employing unit of a nonprofit organization that  
34 employed four or more individuals within the current or preceding calendar  
35 year for some portion of a day in each of 20 different calendar weeks within  
36 such calendar year.

37 (6) Indian tribe. – An employing unit of an Indian tribe, a subdivision or  
38 subsidiary of an Indian tribe, or a business enterprise wholly owned by an  
39 Indian tribe.

40 (7) Federal requirement. – An employing unit liable for federal unemployment  
41 tax under the Federal Unemployment Tax Act or an employing unit required  
42 to be an employer under this Chapter for full tax credit against the tax  
43 imposed by the Federal Unemployment Tax Act.

44 (e) Administration. – An individual performing services within this State for an  
45 employer who maintains two or more separate establishments within this State is deemed to be  
46 employed by a single employer. An individual employed to perform or to assist in performing  
47 the work of an agent or employee of an employer is deemed to be employed by that employer  
48 unless both of the following conditions are met:

49 (1) The agent or employee is an employer subject to the tax imposed by the  
50 Federal Unemployment Tax Act, whether the individual was hired or paid

1 directly by the employing unit or by the agent or employee of the employing  
2 unit.

- 3 (2) The employing unit had actual or constructive knowledge of the work of the  
4 individual.

5 **"§ 96-19.5. Wages.**

6 (a) General. – The term "wages" means all remuneration paid by an employer to an  
7 employee for employment from whatever source. The term includes all of the following:

8 (1) Salaries, commissions, and bonuses.

9 (2) Amounts paid under an order of a court, the National Labor Relations Board,  
10 or any other lawfully constituted adjudicative agency or by private  
11 agreement, consent, or arbitration for loss of pay by reason of discharge.

12 (3) The cash value of all remuneration in any medium other than cash. The  
13 reasonable cash value of remuneration in any medium other than cash must  
14 be estimated and determined in accordance with rules adopted by the  
15 Division.

16 (4) The reasonable amount of gratuities that an employee receives directly from  
17 a customer and reports to the employer and that the employer considers as  
18 salary for the purpose of meeting minimum wage requirements.

19 (5) Tips received while performing services that constitute employment and are  
20 included in a written statement furnished to the employer pursuant to the  
21 requirements of the Code.

22 (6) Any amount paid to an employee or a dependent of an employee on account  
23 of sickness or accident disability that does not meet the requirements of  
24 subdivision (b)(1) of this section.

25 (b) Excluded. – The term "wages" does not include any of the following:

26 (1) The amount of any payment made to, or on behalf of, an employee under a  
27 plan or system established by an employing unit which makes provision for  
28 individuals in its employ generally or for a class or classes of individuals,  
29 including any amount paid by an employing unit for insurance or annuities,  
30 or into a fund, to provide for any such payment, on account of retirement,  
31 sickness or accident disability, medical and hospitalization expenses in  
32 connection with sickness or accident disability, or death.

33 (2) Payments made to an employee under worker's compensation laws.

34 (3) Any payment by an employer without deduction from the remuneration of  
35 the employee of the tax imposed upon an employee under the Federal  
36 Insurance Contributions Act.

37 (4) Any payment made to, or on behalf of, an employee or the employee's  
38 beneficiary from or to a trust that qualifies under the conditions set forth in  
39 sections 401(a)(1) and (2) of the Internal Revenue Code.

40 (5) Any payment made to, or under, an annuity plan which at the time of the  
41 payment meets the requirements of sections 401(a)(3), (4), (5) and (6) of the  
42 Internal Revenue Code and exempt from tax under section 501(a) of the  
43 Internal Revenue Code at the time of the payment, unless the payment is  
44 made to an employee of the trust as remuneration for services rendered as an  
45 employee and not as beneficiary of the trust.

46 (6) Any payment made to, or on behalf of, an employee or his beneficiary under  
47 a Cafeteria Plan within the meaning of section 125 of the Internal Revenue  
48 Code.

49 (7) The amount of any payment, including any amount paid into a fund to  
50 provide for such payment, made to, or on behalf of, an employee under a  
51 plan or system established by an employer or others which makes provision

1 for employees generally, or for a class or group of employees, for the  
2 purpose of supplementing unemployment benefits, provided that the plan has  
3 been approved by the Division in accordance with the Code.

4 **"§ 96-19.6. Unemployed.**

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

7 (1) Payroll attachment. – The individual has payroll attachment but because of  
8 lack of work during the payroll week for which the individual is requesting  
9 the establishment of a benefit year, the individual worked less than the  
10 equivalent of three customary scheduled full-time days in the establishment,  
11 plant, or industry in which the individual has payroll attachment as a regular  
12 employee.

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

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

17 (1) Totally unemployed. – The claimant's earnings for the week, including  
18 payments in subsection (c) of this section, would not reduce the claimant's  
19 weekly benefit amount as calculated in G.S. 96-19.60.

20 (2) Partially unemployed. – The claimant is payroll attached and both of the  
21 following apply:

22 a. The claimant worked less than three customary scheduled full-time  
23 days in the establishment, plant, or industry in which the claimant is  
24 employed because of lack of work during the payroll week for which  
25 the claimant is requesting benefits.

26 b. The claimant's earnings for the payroll week for which the claimant  
27 is requesting benefits, including payments in subsection (c) of this  
28 section, would qualify the claimant for a reduced weekly benefit  
29 amount as calculated in G.S. 96-19.60.

30 (3) Part-totally unemployed. – The claimant has no payroll attachment during all  
31 or part of the week and the claimant's earnings for odd jobs or subsidiary  
32 work would qualify the claimant for a reduced weekly benefit amount as  
33 calculated in G.S. 96-19.60.

34 (c) Separation Payments. – An individual is not unemployed if, with respect to the  
35 entire calendar week, the individual receives or will receive as a result of the individual's  
36 separation from work remuneration in one or more of the forms listed in this subsection. If the  
37 remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it  
38 had been earned by the individual during a week of employment. An individual may be  
39 unemployed, as provided in subsection (b) of this section, if the individual is receiving payment  
40 applicable to less than the entire week.

41 (1) Wages in lieu of notice.

42 (2) Accrued vacation pay.

43 (3) Terminal leave pay.

44 (4) Severance pay.

45 (5) Separation pay.

46 (6) Dismissal payments or wages by whatever name.

47 "Part 2. Coverage.

48 **"§ 96-19.20. Employers and employees.**

49 (a) Coverage. – An employing unit that is an employer under this Article and employs  
50 individuals in an employment service covered under this Article must finance the

1 unemployment benefits paid through the UI Fund and its employees accrue rights to  
2 unemployment benefits as provided in this Article.

3 (b) Acquisition. – An employer who, by operation of law, purchase, or otherwise  
4 becomes successor to an employer liable for contributions becomes liable for contributions on  
5 the day of the succession. This provision does not affect the successor's liability as otherwise  
6 prescribed by law for unpaid contributions due from the predecessor.

7 (c) Exemption. – This Chapter does not apply to service performed by an individual as  
8 an employee or employee representative as defined in section 1 of the Railroad Unemployment  
9 Insurance Act.

10 **"§ 96-19.21. Voluntary election.**

11 (a) Employer. – An employer not otherwise liable for contributions under this Chapter  
12 may file with the Division its written election to become an employer subject to this Chapter.  
13 Upon the written approval of the Division, the employer becomes subject to this Chapter to the  
14 same extent as all other employers as of the date stated in the approval. The election must be  
15 valid for a period of not less than two years.

16 (b) Employment. – An employer for services that do not constitute employment under  
17 this Chapter may file with the Division its written election that all services performed by  
18 individuals in its employ, in one or more distinct establishments or places of business,  
19 constitute employment for all the purposes of this Chapter. Upon the written approval of the  
20 Division, the services become subject to this Chapter to the same extent as all other services as  
21 of the date stated in the approval. The election must be valid for a period of not less than two  
22 years.

23 (c) Employees. – An employer who employs the services of an individual who resides  
24 within this State but performs the services entirely without the State may file with the Division  
25 its written election to have the individual's service constitute employment for all purposes of  
26 this Chapter if contributions are not required and are not paid with respect to the services under  
27 an employment security law of any other state or of the federal government. Upon the written  
28 approval of the Division, the services become subject to this Chapter to the same extent as all  
29 other services as of the date stated in the approval. The election must be valid for a period of  
30 not less than two years.

31 (d) Termination of Election. – The Division may, on its own motion, terminate  
32 coverage of an employer who has become subject to this Chapter solely by electing coverage  
33 under this section. The Division must give the employer 30 days written notice of its decision.  
34 The notice must be mailed to the employer's last known address. An employer who elects  
35 coverage under this section may, subsequent to the two-year minimum election period, file a  
36 written notice to the Division to have coverage under this Chapter cease. The notice must be  
37 given prior to the first day of March following the first day of January of the calendar year for  
38 which the employing unit wishes to cease coverage under this section.

39 **"§ 96-19.22. Termination of coverage.**

40 (a) Nonpayment of Wages. – An employer who has not paid any covered wages for  
41 employment in this State during a period of two consecutive calendar years ceases to be an  
42 employer liable for contributions under this Chapter.

43 (b) No Employment of Individuals. – An employer who has not had individuals in  
44 employment and who has made an application for exemption from filing contribution and wage  
45 reports and has been so exempted may be terminated from liability upon written application  
46 made within 120 days after notification by the Division of the reactivation of the employer's  
47 account. The Division may terminate coverage if it finds that the employer was not liable for  
48 contributions during the preceding calendar year. Termination of coverage under this  
49 subsection may be effective January 1 of any calendar year. In the event these cases are  
50 reactivated, a protest of liability is considered an application for termination where the decision  
51 with respect to the protest is not final.

1       (c) Application for Termination. – An employer may file a written application for  
2 termination of coverage with the Division. An application for termination must be filed prior to  
3 the first day of March following the first day of January of the calendar year for which the  
4 employer wishes to cease coverage. The Division may terminate coverage if it finds that the  
5 employer was not liable for contributions during the preceding calendar year. Termination of  
6 coverage under this subsection is effective as of the first day of January in any calendar year.

7       (d) Termination by Discovery of Liability. – An employer whose liability covers a  
8 period of more than two years when first discovered by the Division may file a written  
9 application for termination within 90 days after notification by the Division of the employer's  
10 liability. The Division may terminate coverage of the employer effective January 1 and for any  
11 subsequent year if the Division finds that the employer was not liable for contributions during  
12 the preceding calendar year. In these discovered cases, a protest of liability is considered as an  
13 application for termination where the decision with respect to the protest is not final. This  
14 subsection does not apply to a case of willful attempt to defeat or evade the payment of  
15 contributions due.

### "Part 3. Contributions

#### **"§ 96-19.30. Payment of Contributions.**

18       (a) Imposition. – A contribution is imposed on the taxable wages of each individual  
19 employed by an employer during the calendar year at the rate set in G.S. 96-19.31.  
20 Contributions must be credited to the UI Fund. Contributions made by employers must be  
21 credited to the employer's account as provided in Part 4 of this Article.

22       (b) Report and Payment. – Contributions are payable to the Division when a report is  
23 due. An employer of domestic service employees may be given permission by the Secretary to  
24 file reports once a year on or before the last day of the month following the close of the  
25 calendar year in which the wages are paid. All other reports are due on or before the last day of  
26 the month following the close of the calendar quarter in which the wages are paid. The Division  
27 must remit the contributions to the Fund. An employer may not deduct the contributions due in  
28 whole or in part from the remuneration of the individuals employed. If the amount of the  
29 contributions shown to be due after all credits is less than five dollars (\$5.00), no payment need  
30 be made.

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

37       The Division may establish policies to allow taxes to be payable under certain conditions by  
38 credit card. A condition of payment by credit card is receipt by the Division of the full amount  
39 of taxes, penalties, and interest due. The Division shall require an employer who pays by credit  
40 card to include an amount equal to any fee charged the Division for the use of the card. A  
41 payment of taxes that is made by credit card and is not honored by the card issuer does not  
42 relieve the employer of the obligation to pay the taxes.

43       (d) Form of Report. – An employer of domestic service employee that is granted  
44 permission to file an annual report may be given permission to file reports by telephone. An  
45 employer who reports by telephone must contact either the Field Tax Auditor who is assigned  
46 to the employer's account or the Employment Insurance Section in Raleigh and report the  
47 required information to that Auditor or to the Division by the date the report is due.

48       An employer with 100 or more employees, and every person or organization that reports  
49 wages on a total of 100 or more employees as an agent on behalf of one or more subject  
50 employers, must file that portion of the "Employer's Quarterly Tax and Wage Report" that  
51 contains the name, social security number, and gross wages of each individual in employment

1 on magnetic tapes or diskettes in a format prescribed by the Division. For failure of an  
2 employer to comply with this subsection, the Division must add to the amount required to be  
3 shown as tax in the reports a penalty of twenty-five dollars (\$25.00). For failure of an agent to  
4 comply with this subdivision, the Division may deny the agent the right to report wages and file  
5 reports for the employer for whom the agent filed an improper report for a period of one year  
6 following the calendar quarter in which that agent filed the improper report. The Division may  
7 reduce or waive a penalty for good cause shown.

8 (e) Overpayments. – If an employer has paid contributions, penalties, and interest in  
9 excess of the amount due, this amount is considered an overpayment and may be refunded to  
10 the employer provided no other debts are owed to the Division by the employer. Overpayments  
11 of less than five dollars (\$5.00) will be refunded only upon receipt by the Secretary of a written  
12 demand for such refund from the employer.

13 (f) Voluntary Contributions. – An employer may make a voluntary contribution to the  
14 fund to be credited to its account. A voluntary contribution will for all intents and purposes be  
15 deemed a required contribution. The Division is not bound by any condition stipulated in or  
16 made a part of the voluntary contribution by the employer.

17 (g) Assessment. – If the Division has reason to believe that the collection of any  
18 contribution under this Chapter will be jeopardized by delay, the Division may, whether or not  
19 the time otherwise prescribed by law for making returns and paying the tax has expired,  
20 immediately assess the contributions, together with all interest and penalties. Such  
21 contributions, penalties, and interest become immediately due and payable.

#### 22 **"§ 96-19.31. Rate of contribution to the UI Fund.**

23 (a) Contribution Rate Calculation. – The Division must determine the contribution rate  
24 for each employer based on the employer's reserve ratio on the computation date, August 1.  
25 The Division must notify each employer of the employer's contribution rate for the succeeding  
26 calendar year by January 1 of the succeeding calendar year. The contribution rate becomes final  
27 unless the employer files an application for review and redetermination prior to May 1  
28 following the effective date of the contribution rate. The Division may redetermine the  
29 contribution rate on its own motion within the same time period.

30 (b) Standard Beginning Rate. – The standard beginning rate of contributions for an  
31 employer is one percent (1%) of taxable wages paid by the employer during a calendar year for  
32 employment occurring during that year. No employer's contribution rate may be reduced below  
33 the standard rate for any calendar year until its account has been chargeable with benefits for at  
34 least 12 calendar months ending July 31 immediately preceding the computation date. An  
35 employer's account has been chargeable with benefits for at least 12 calendar months if the  
36 employer has reported wages paid in four completed calendar quarters. No employer's  
37 contribution rate may be reduced below the standard rate for any calendar year unless its  
38 liability extends over a period of all or part of two consecutive calendar years and, as of August  
39 1 of the second year, its credit reserve ratio meets the requirements used in computing rates for  
40 the following calendar year.

41 (c) Other Rates. – The contribution rate for employers not covered under subsection (b)  
42 of this section is a percentage of taxable wages paid by the employer during a calendar year for  
43 employment occurring during that year. The percentage for employers whose reserve ratio is  
44 equal to zero is the rate set forth in the table below, divided by 100. The percentage for  
45 employers whose reserve ratio is not equal to zero is the applicable rate in the table below  
46 minus the employer's effective reserve ratio, divided by 100. The employer's effective reserve  
47 ratio is equal to the employer's reserve ratio multiplied by sixty-eight hundredths. The Division  
48 must round the rate to the nearest one-hundredth percent. The minimum contribution rate may  
49 not be less than six-tenths of one percent (0.06%) and the maximum contribution rate may not  
50 exceed five and seventy-sixths hundredths percent (5.76%).

51 **Trust Fund Balance**

**Contribution Rate**

1	<u>Less than or equal to 1% of total insured wages</u>	<u>2.9</u>
2	<u>Greater than 1% but less than or equal to 1.25%</u>	
3	<u>of total insured wages</u>	<u>2.4</u>
4	<u>Above 1.25% of total insured wages</u>	<u>1.9</u>

5 (d) Taxable Wages. – An individual's taxable wages are the wages subject to  
6 contribution under this section. The Division must determine the taxable wage base applicable  
7 for each taxable year. The taxable wage base is the greater of the federally required taxable  
8 wage base or the product resulting from multiplying the average yearly insured wage by fifty  
9 percent (50%), rounded to the nearest multiple of one hundred dollars (\$100.00). The average  
10 yearly insured wage is the average weekly insured wage on the computation date multiplied by  
11 52. An employer is not liable for contributions on wages paid to an individual that exceed the  
12 taxable wage base.

13 The following wages are included in determining whether the amount of wages paid to an  
14 individual in a single calendar year exceeds the taxable wage base:

15 (1) Wages paid to an individual in this State by an employer that made  
16 contributions in another state upon the wages paid to the individual because  
17 the work was performed in the other state.

18 (2) Wages paid by a successor employer to an individual that meets both of the  
19 following conditions:

20 a. The individual was an employee of the predecessor and was taken  
21 over as an employee by the successor as a part of the organization  
22 acquired.

23 b. The predecessor employer has paid contributions on the wages paid  
24 to the individual while in the predecessor's employ during the year of  
25 acquisition and the account of the predecessor is transferred to the  
26 successor.

27 (e) Total Insured Wages. – For purposes of this section, the term "total insured wages"  
28 means all wages earned by employees insured by the State's unemployment insurance program.

29 **"§ 96-19.32. Nonprofit organizations and governmental entities.**

30 (a) Applicability. – This section applies to an employing unit that is a nonprofit  
31 organization, the State, or a local governmental unit. Benefits paid to employees of the State,  
32 local governmental units, and nonprofit organizations may be financed in accordance with the  
33 provisions of this section.

34 (b) Election. – An employer to whom this section applies must finance benefits under  
35 the contributions method of payment applicable to taxpaying employers, unless it elects to  
36 finance benefits by making reimbursable payments to the Division for the UI Fund. The  
37 amount of reimbursable payment the employer must make is equal to the amount of regular  
38 benefits and one-half of the extended benefits paid to an individual for weeks of unemployment  
39 that begin within a benefit year established during the effective period of the election and that  
40 are attributable to service in the employ of the electing employer.

41 To make an election under this section, an employer must file a written notice of its election  
42 with the Division at least 30 days before the January 1 effective date of the election. An  
43 election made under this section is valid for a minimum of four years. An election made under  
44 this section is binding until the employer files a notice terminating its election. A written notice  
45 of termination must be filed with the Division at least 30 days before the January 1 effective  
46 date of the termination. The Division must notify an employer of any determination of the  
47 effective date of any election it makes and of any termination of the election. These  
48 determinations are subject to reconsideration, appeal, and review.

49 (c) Account. – The Division must establish a separate account for each reimbursing  
50 employer. The Division must credit payments made by the employer to the account. The  
51 Division must allocate benefits paid by the UI Fund to individuals for weeks of unemployment

1 that begin within a benefit year established during the effective period of the election that are  
2 attributable to service in the employ of the employer. No benefits may be noncharged except  
3 amounts equal to one hundred percent (100%) of benefits paid through error.

4 (d) Quarterly Contributions and Wage Reports. – An employer that elects to be a  
5 reimbursing employer under this section must submit quarterly contributions and wage reports  
6 and advance payments to the Division on or before the last day of the month following the  
7 close of the calendar quarter in which the wages are paid. The amount of the advance payment  
8 is equal to one percent (1%) of the taxable wages reported. The Division must remit the  
9 payments to the UI Fund and credit the payments to the employer's account. An employer may  
10 not deduct the contributions due in whole or in part from the remuneration of the individuals  
11 employed.

12 An employer paying by reimbursement that, prior to July 1, paid under the reimbursement  
13 method of payment for the preceding calendar year, must continue to file quarterly reports but  
14 does not need to make a payment with those reports.

15 (e) Annual Reconciliation. – An employer that elects to finance benefits under the  
16 reimbursement method of payment must maintain an account balance equal to one percent  
17 (1%) of its taxable wages. The Division must determine the balance of each employer's account  
18 as of August 1 of each year. The Division must furnish the employer with a statement of all  
19 charges and credits to the account prior to January 1 of the succeeding year.

20 If there is a deficit in the account, the Division must bill the employer for an amount  
21 necessary to bring its account to one percent (1%) of its taxable wages. Any amount in the  
22 account in excess of one percent (1%) of taxable wages must be credited to the employer's  
23 account. Amounts due from the employer to bring its account to a one percent (1%) balance  
24 will be billed as soon as practical and payment is due within 30 days from the date of mailing  
25 of the statement of the amount due.

26 (f) Accelerated Reconciliation. – The Division may, in its sole discretion, provide a  
27 reimbursing employer with informational bills or lists of charges on a basis more frequent than  
28 yearly if the Division considers such action to be in the best interest of the Division and the  
29 affected employer.

30 (g) Change in Election. – The Division must close the account of an employing unit that  
31 has been paying contributions under this Article and that elects to change to a reimbursement  
32 basis under this section and the account may not be used in any future computation of the unit's  
33 contribution rate in any manner.

34 (h) Transition. – This subsection is intended to provide a transitional adjustment period  
35 for an employing unit that elected to be a reimbursing employer prior to January 1, 2013, but  
36 was not required to secure its election with an account balance equal to one percent (1%) of its  
37 taxable wages. This subsection expires January 1, 2016.

38 (1) Governmental entities. – An employing unit that is a State or local  
39 governmental unit may elect to forego the payment under subsection (e) of  
40 this section until the reconciliation in 2014 payable in 2015. An employer  
41 who makes the election under this subdivision must reimburse the Division  
42 in the amount required by subsection (b) of this section and must continue to  
43 make quarterly contributions and advance payments under subsection (d) of  
44 this section.

45 (2) Nonprofit organization. – An employing unit that is a nonprofit organization  
46 that secured its election by posting a surety bond or a line of credit does not  
47 need to meet the annual reconciliation account balance requirement until the  
48 year in which its surety bond or line of credit expires. After July 1, 2013, a  
49 nonprofit organization may not submit a surety bond or a line of credit to  
50 secure its election under this section.

51 **"§ 96-19.33. Indian tribes.**

1       (a) Applicability. – Benefits paid to employees of Indian tribe employing units may be  
2 financed in accordance with the provisions of this section.

3       (b) Election. – An Indian tribe employing unit must pay contributions under the  
4 provisions of this Article, unless it elects in accordance with this section to pay the Division for  
5 the Trust Fund an amount equal to the amount of benefits paid that is attributable to service in  
6 the employ of the unit, to individuals for weeks of unemployment that begin within a benefit  
7 year established during the effective period of the election. Extended benefits paid that are  
8 attributable to service in the employ of an Indian tribe employing unit and not reimbursed by  
9 the federal government must be financed in their entirety by the Indian tribe employing unit.

10       To make an election under this section, an Indian tribe employing unit must file a written  
11 notice of its election with the Division at least 30 days before the January 1 effective date of the  
12 election. An election made under this section is valid for a minimum of three years. An election  
13 made under this section is binding until the Indian tribe employing unit files a notice  
14 terminating its election. A written notice of termination must be filed with the Division at least  
15 30 days before the January 1 effective date of the termination. The Division must notify each  
16 Indian tribe employing unit of any determination of the effective date of any election it makes  
17 and of any termination of the election. These determinations are subject to reconsideration,  
18 appeal, and review.

19       (c) Account. – The Division must establish a separate account for each reimbursing  
20 employer. The Division must credit payments made by the employer to the account. The  
21 Division must allocate benefits paid by the Trust Fund to individuals for weeks of  
22 unemployment that begin within a benefit year established during the effective period of the  
23 election that are attributable to service in the employ of the employer. No benefits may be  
24 noncharged except amounts equal to one hundred percent (100%) of benefits paid through  
25 error. Extended benefits paid that are attributable to service in the employ of an Indian tribe  
26 employing unit and not reimbursed by the federal government must be financed in their entirety  
27 by the Indian tribe employing unit.

28       (d) Quarterly Contributions and Wage Reports. – An Indian tribe employing unit that  
29 elects to be a reimbursing employer under this section must submit quarterly contributions and  
30 wage reports and advance payments to the Division on or before the last day of the month  
31 following the close of the calendar quarter in which the wages are paid. The amount of the  
32 advance payment is equal to one percent (1%) of the taxable wages reported. The Division  
33 must remit the payments to the Fund and credit the payments to the employer's account. An  
34 employer may not deduct the contributions due in whole or in part from the remuneration of the  
35 individuals employed.

36       Any Indian tribe employing unit paying by reimbursement having been, prior to July 1,  
37 under the reimbursement method of payment for the preceding calendar year, must continue to  
38 file quarterly reports but does not need to make a payment with those reports.

39       (e) Annual Reconciliation. – A reimbursing employer that elects to finance benefits  
40 under the reimbursement method of payment must maintain an account balance equal to one  
41 percent (1%) of its taxable wages. The Division must determine the balance of each employer's  
42 account as of August 1 of each year. The Division must furnish the employer with a statement  
43 of all charges and credits to the account prior to January 1 of the succeeding year.

44       If there is a deficit in the account, the Division must bill the employer for an amount  
45 necessary to bring its account to one percent (1%) of its taxable wages. Any amount in the  
46 account in excess of one percent (1%) of taxable wages must be credited to the employer's  
47 account. Amounts due from the employer to bring its account to a one percent (1%) balance  
48 will be billed as soon as practical and payment is due within 25 days from the date of mailing  
49 of the statement of the amount due.

50       (f) Collection Notice. – Notices of payment and reporting delinquency to Indian tribe  
51 employing units must include information that failure to make full payment within the time

1 prescribed causes the unit to become liable for contributions G.S. 96-19.30, causes the unit to  
2 lose the option of making payment by reimbursement in lieu of contributions, and may cause  
3 the unit to lose coverage under this Chapter for services performed for the unit.

4 (g) Forfeiture of Option. – If an Indian tribe employing unit fails to make payments,  
5 including interest and penalties, required under this section within 90 days after receipt of the  
6 bill, the unit loses the option to make payments by reimbursement in lieu of contributions for  
7 the following calendar year unless payment in full is made before contribution rates for the  
8 following calendar year are computed. An Indian tribe that has lost the option to make  
9 payments by reimbursement in lieu of contributions for a calendar year regains that option for  
10 the following calendar year if it makes all contributions timely during the year for which the  
11 option was lost, and no payments, penalties, or interest remain outstanding.

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

19 The Division must notify the Internal Revenue Service and the United States Department of  
20 Labor of any termination or reinstatement of coverage pursuant to this subsection.

21 (i) Change in Election. – The account of an Indian tribe employing unit that has been  
22 paying contributions under this Chapter for a period of at least three consecutive calendar years  
23 and that elects to change to a reimbursement basis must be closed and may not be used in any  
24 future computation of the unit's contribution rate in any manner.

25 **"§ 96-19.34. Surcharge for the Employment Security Reserve Fund.**

26 (a) Tax imposed. – A tax is imposed upon taxpaying employers at a rate equal to twenty  
27 percent (20%) of the amount of contributions due under G.S. 96-19.30. The tax is collected and  
28 administered in the same manner as contributions.

29 (b) Purpose of Tax. – Taxes collected under this section provide revenue for the  
30 purposes listed in G.S. 96-6.1. Taxes must be credited to the Employment Security Reserve  
31 Fund and refunds of the taxes may be paid from the same fund. Any interest collected on  
32 unpaid taxes imposed by this section may be credited to the Special Employment Security  
33 Administration Fund, and any interest refunded on taxes imposed by this section may be paid  
34 from the same fund.

35 (c) Suspension of Tax. – The tax does not apply in a calendar year if, as of August 1 of  
36 the preceding year, the amount in the State's account in the Unemployment Trust Fund,  
37 established pursuant to section 903 of Title IX of the Social Security Act, equals or exceeds one  
38 billion dollars (\$1,000,000,000).

39 **"§ 96-19.35. Collection of contributions.**

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

1        (b)    Collection. –

2            (1)    If, after due notice, any employer defaults in any payment of contributions or  
3            interest thereon, the amount due shall be collected by civil action in the  
4            name of the Division, and the employer adjudged in default shall pay the  
5            costs of such action. Civil actions brought under this section to collect  
6            contributions or interest thereon from an employer shall be heard by the  
7            court at the earliest possible date and shall be entitled to preference upon the  
8            calendar of the court over all other civil actions, except petitions for judicial  
9            review under this Chapter and cases arising under the Workers'  
10           Compensation Law of this State; or, if any contribution imposed by this  
11           Chapter, or any portion thereof, and/or penalties duly provided for the  
12           nonpayment thereof shall not be paid within 30 days after the same become  
13           due and payable, and after due notice and reasonable opportunity for  
14           hearing, the Division, under the hand of the Assistant Secretary, may certify  
15           the same to the clerk of the superior court of the county in which the  
16           delinquent resides or has property, and additional copies of said certificate  
17           for each county in which the Division has reason to believe the delinquent  
18           has property located. If the amount of a delinquency is less than fifty dollars  
19           (\$50.00), the Division may not certify the amount to the clerk of court until a  
20           field tax auditor or another representative of the Division personally  
21           contacts, or unsuccessfully attempts to personally contact, the delinquent and  
22           collect the amount due. A certificate or a copy of a certificate forwarded to  
23           the clerk of the superior court shall immediately be docketed and indexed on  
24           the cross index of judgments, and from the date of such docketing shall  
25           constitute a preferred lien upon any property which said delinquent may own  
26           in said county, with the same force and effect as a judgment rendered by the  
27           superior court. The Division shall forward a copy of said certificate to the  
28           sheriff or sheriffs of such county or counties, or to a duly authorized agent of  
29           the Division, and when so forwarded and in the hands of such sheriff or  
30           agent of the Division, shall have all the force and effect of an execution  
31           issued to such sheriff or agent of the Division by the clerk of the superior  
32           court upon a judgment of the superior court duly docketed in said county.  
33           Provided, however, the Division may in its discretion withhold the issuance  
34           of said certificate or execution to the sheriff or agent of the Division for a  
35           period not exceeding 180 days from the date upon which the original  
36           certificate is certified to the clerk of superior court. The Division is further  
37           authorized and empowered to issue alias copies of said certificate or  
38           execution to the sheriff or sheriffs of such county or counties, or to a duly  
39           authorized agent of the Division in all cases in which the sheriff or duly  
40           authorized agent has returned an execution or certificate unsatisfied; when so  
41           issued and in the hands of the sheriff or duly authorized agent of the  
42           Division, such alias shall have all the force and effect of an alias execution  
43           issued to such sheriff or duly authorized agent of the Division by the clerk of  
44           the superior court upon a judgment of the superior court duly docketed in  
45           said county. Provided, however, that notwithstanding any provision of this  
46           subsection, upon filing one written notice with the Division, the sheriff of  
47           any county shall have the sole and exclusive right to serve all executions and  
48           make all collections mentioned in this subsection and in such case no agent  
49           of the Division shall have the authority to serve any executions or make any  
50           collections therein in such county. A return of such execution, or alias  
51           execution, shall be made to the Division, together with all moneys collected

1           thereunder, and when such order, execution, or alias is referred to the agent  
2           of the Division for service the said agent of the Division shall be vested with  
3           all the powers of the sheriff to the extent of serving such order, execution, or  
4           alias and levying or collecting thereunder. The agent of the Division to  
5           whom such order or execution is referred shall give a bond not to exceed  
6           three thousand dollars (\$3,000) approved by the Division for the faithful  
7           performance of such duties. The liability of said agent shall be in the same  
8           manner and to the same extent as is now imposed on sheriffs in the service  
9           of executions. If any sheriff of this State or any agent of the Division who is  
10           charged with the duty of serving executions shall willfully fail, refuse, or  
11           neglect to execute any order directed to him by the said Division and, within  
12           the time provided by law, the official bond of such sheriff or of such agent of  
13           the Division shall be liable for the contributions, penalty, interest, and costs  
14           due by the employer.

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

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

45           (c)   Priorities under Legal Dissolution or Distributions. – In the event of any distribution  
46           of an employer's assets pursuant to an order of any court under the laws of this State, including  
47           any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or  
48           similar proceeding, contributions then or thereafter due shall be paid in full prior to all other  
49           claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars  
50           (\$250.00) to each claimant, earned within six months of the commencement of the proceeding.  
51           In the event of an employer's adjudication in bankruptcy, judicially confirmed extension

1 proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions  
2 then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act  
3 (U.S.C., Title 11, section 104(a)), as amended.

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

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

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

46 (f) No injunction shall be granted by any court or judge to restrain the collection of any  
47 tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain  
48 the sale of any property under writ of execution, judgment, decree, or order of court for the  
49 nonpayment thereof. Whenever any employer, person, firm, or corporation against whom taxes  
50 or contributions provided for in this Chapter have been assessed, shall claim to have a valid  
51 defense to the enforcement of the tax or contribution so assessed or charged, such employer,

1 person, firm, or corporation shall pay the tax or contribution so assessed to the Division; but if  
2 at the time of such payment he shall notify the Division in writing that the same is paid under  
3 protest, such payment shall be without prejudice to any defenses or rights he may have in the  
4 premises, and he may, at any time, within 30 days after such payment, demand the same in  
5 writing from the Division; and if the same shall not be refunded within 90 days thereafter, he  
6 may sue the Division for the amount so demanded; such suit against the Division must be  
7 brought in the Superior Court of Wake County, or in the county in which the taxpayer resides,  
8 or in the county where the taxpayer conducts his principal place of business; and if, upon the  
9 trial it shall be determined that such tax or contribution or any part thereof was for any reason  
10 invalid, excessive, or contrary to the provisions of this Chapter, the amount paid shall be  
11 refunded by the Division accordingly. The remedy provided by this subsection shall be deemed  
12 to be cumulative and in addition to such other remedies as are provided by other subsections of  
13 this Chapter. No suit, action, or proceeding for refund or to recover contributions or payroll  
14 taxes paid under protest according to the provisions of this subsection shall be maintained  
15 unless such suit, action, or proceeding is commenced within one year after the expiration of the  
16 90 days mentioned in this subsection, or within one year from the date of the refusal of the  
17 Division to make refund should such refusal be made before the expiration of said 90 days  
18 above mentioned. The one-year limitation here imposed shall not be retroactive in its effect,  
19 shall not apply to pending litigation, nor shall the same be construed as repealing, abridging or  
20 extending any other limitation or condition imposed by this Chapter.

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

30 An employer who fails to file a report within the required time shall be assessed a late filing  
31 penalty of five percent (5%) of the amount of contributions due with the report for each month  
32 or fraction of a month the failure continues. The penalty may not exceed twenty-five percent  
33 (25%) of the amount of contributions due. An employer who fails to file a report within the  
34 required time but owes no contributions shall not be assessed a penalty unless the employer's  
35 failure to file continues for more than 30 days.

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

41 (i) Except as otherwise provided in this subsection, no suit or proceedings for the  
42 collection of unpaid contributions may be begun under this Chapter after five years from the  
43 date on which the contributions become due, and no suit or proceeding for the purpose of  
44 establishing liability and/or status may be begun with respect to any period occurring more than  
45 five years prior to the first day of January of the year within which the suit or proceeding is  
46 instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat  
47 or evade the payment of any contributions becoming due under this Chapter. A proceeding  
48 shall be deemed to have been instituted or begun upon the date of issuance of an order by the  
49 Assistant Secretary of the Division directing a hearing to be held to determine liability or  
50 nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and  
51 demand for payment is mailed by certified mail to the last known address of the employing

1 unit. The order shall be deemed to have been issued on the date the order is mailed by certified  
2 mail to the last known address of the employing unit. The running of the period of limitations  
3 provided in this subsection for the making of assessments or collection shall, in a case under  
4 Title II of the United States Code, be suspended for the period during which the Division is  
5 prohibited by reason of the case from making the assessment or collection and for a period of  
6 one year after the prohibition is removed.

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

- 15 (1) The death or serious illness of the employer or a member of the employer's  
16 immediate family or by the death or serious illness of the person in the  
17 employer's organization responsible for the preparation and filing of the  
18 report;
- 19 (2) Destruction of the employer's place of business or business records by fire or  
20 other casualty;
- 21 (3) Failure of the Division to furnish proper forms upon timely application by  
22 the employer, by reason of which failure the employer was unable to execute  
23 and file the report on or before the due date;
- 24 (4) The inability of the employer or the person in the employer's organization  
25 responsible for the preparation and filing of reports to obtain an interview  
26 with a representative of the Division upon a personal visit to the central  
27 office or any local office for the purpose of securing information or aid in  
28 the proper preparation of the report, which personal interview was attempted  
29 to be had within the time during which the report could have been executed  
30 and filed as required by law had the information at the time been obtained;
- 31 (5) The entrance of one or more of the owners, officers, partners, or the majority  
32 stockholder into the Armed Forces of the United States, or any of its allies,  
33 or the United Nations, provided that the entrance was unexpected and is not  
34 the annual two weeks training for reserves; and
- 35 (6) Other circumstances where, in the opinion of the Secretary, Assistant  
36 Secretary, or their designees, the imposition of penalties would be  
37 inequitable.

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

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

44 **"§ 96-19.36. Compromise of liability.**

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

- 48 (1) There is a reasonable doubt as to the amount of the liability of the taxpayer  
49 under the law and the facts.
- 50 (2) The taxpayer is insolvent and the Secretary probably could not otherwise  
51 collect an amount equal to, or in excess of, the amount offered in

1 compromise. A taxpayer is considered insolvent only in one of the following  
2 circumstances:

3 a. It is plain and indisputable that the taxpayer is clearly insolvent and  
4 will remain so in the reasonable future.

5 b. The taxpayer has been determined to be insolvent in a judicial  
6 proceeding.

7 (3) Collection of a greater amount than that offered in compromise is  
8 improbable, and the funds or a substantial portion of the funds offered in the  
9 settlement come from sources from which the Secretary could not otherwise  
10 collect.

11 (b) Written Statement. – When the Secretary compromises a tax liability under this  
12 section and the amount of the liability is at least one thousand dollars (\$1,000), the Secretary  
13 must make a written statement that sets out the amount of the liability, the amount accepted  
14 under the compromise, a summary of the facts concerning the liability, and the findings on  
15 which the compromise is based. The Secretary must sign the statement and keep a record of the  
16 statement.

17 "Part 4. Experience Rating.

18 **"§ 96-19.40. Employer account.**

19 (a) Employer Account. – The Division must maintain a separate account for each  
20 employer. The Division must charge the employer's account for benefits, as provided in  
21 G.S. 96-19.41. The Division must credit the employer's account with all contributions paid by  
22 the employer or on the employer's behalf. Any voluntary contributions made by an employer  
23 within 30 days after the date of mailing by the Division of notification of contribution rate, as  
24 required by G.S. 96-19.30, must be credited to its account as of the previous July 31.

25 (b) Closed Account. – Except as provided in subsection (c) of this section, when an  
26 employer ceases to be an employer, the employer's account must be closed and may not be used  
27 in any future computation of the employer's contribution rate.

28 (c) Acquisition of Existing Business. – When an employer acquires all of the  
29 organization, trade, or business of another employing unit, the Division shall transfer the  
30 account of the predecessor to the successor employer as of the date of the acquisition for use in  
31 the determination of the successor's rate of contributions. This mandatory transfer does not  
32 apply when there is no common ownership between the predecessor and the successor and the  
33 successor acquired the assets of the predecessor in a sale in bankruptcy. In this circumstance,  
34 the successor's rate of contributions is determined without regard to the predecessor's rate of  
35 contributions.

36 When an employer acquires a distinct and severable portion of the organization, trade, or  
37 business of another employing unit, the part of the account of the predecessor that relates to the  
38 acquired portion of the business may, upon the mutual consent of the parties concerned and  
39 approval of the Division, be transferred as of the date of acquisition to the successor employer  
40 for use in the determination of the successor's rate of contributions, provided application for  
41 transfer is made within 60 days after the Division notifies the successor of the right to request  
42 such transfer, otherwise the effective date of the transfer is the first day of the calendar quarter  
43 in which the application is filed, and that after the transfer the successor employing unit  
44 continues to operate the transferred portion of such organization, trade, or business.

45 Whenever part of an organization, trade, or business is transferred between entities subject  
46 to substantially common ownership, management, or control, the account must be transferred in  
47 accordance with rules adopted by the Division. However, employing units transferring entities  
48 with any common ownership, management, or control are not entitled to separate and distinct  
49 employer status under this Chapter. Provided however, that the transfer of an account for the  
50 purpose of computation of rates is considered to have been made prior to the computation date  
51 falling within the calendar year within which the effective date of the transfer occurs, and the

1 account must be used in the computation of the rate of the successor employer for succeeding  
2 years. No request for a transfer of the account may be accepted and no transfer of the account  
3 may be made if the request for the transfer of the account is not received within two years of  
4 the date of acquisition or notification by the Division of the right to request a transfer,  
5 whichever occurs later. However, in no event is a request for a transfer allowed if an account  
6 has been terminated because an employer ceases to be an employer pursuant to  
7 G.S. 96-19.40(b) and G.S. 96-19.22, regardless of the date of notification.

8 (d) Contributions Credited to Wrong Account. – Whenever contributions are  
9 erroneously paid into one account that should have been paid into another account or that  
10 should have been paid into a new account, the erroneous payment may be adjusted only by  
11 refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an  
12 existing account may be made, nor can a new account be created by transferring any portion of  
13 the erroneously paid amount, notwithstanding that the entities involved may be owned,  
14 operated, or controlled by the same person or organization. No adjustment of a contribution rate  
15 may be made that reduces the rate below the standard rate for any period in which the account  
16 was not in actual existence and in which it was not actually chargeable for benefits. Whenever  
17 payments are found to have been made to the wrong account, refunds can be made to the entity  
18 making the wrongful payment for a period not exceeding five years from the last day of the  
19 calendar year in which it is determined that wrongful payments were made. Notwithstanding  
20 payment into the wrong account, if an entity is determined to have met the requirements to be a  
21 covered employer, whether or not the entity has paid on the account of its employees any sum  
22 into another account, the Division must collect contributions at the standard rate or the assigned  
23 rate, whichever is higher, for the five years preceding the determination of erroneous payments,  
24 which five years runs from the last day of the calendar year in which the determination of  
25 liability for contributions or additional contributions is made. This requirement applies  
26 regardless of whether the employer acted in good faith.

27 (e) Interest Credited. – On the computation date, the ratio of the credit balance in each  
28 individual account to the total of all the credit balances in all employer accounts must be  
29 computed, and an amount equal to the interest credited to this State's account in the  
30 unemployment trust fund in the Treasury of the United States for the four most recently  
31 completed calendar quarters must be credited prior to the next computation date on a pro rata  
32 basis to all employers' accounts having a credit balance on the computation date. The amount  
33 must be prorated to the individual accounts in the same ratio that the credit balance in each  
34 individual account bears to the total of the credit balances in all such accounts. In computing  
35 the amount to be credited to the account of an employer as a result of interest earned by funds  
36 on deposit in the unemployment trust fund in the Treasury of the United States to the account  
37 of this State, any voluntary contributions made by an employer after July 31 of any year shall  
38 not be considered a part of the account balance of the employer until the next computation date  
39 occurring after the voluntary contribution was made.

40 **§ 96-19.41. Charging of benefit payments to employer account.**

41 (a) Allocation of Charged. – Benefits paid to a claimant must be allocated to the  
42 account of each base period employer in the proportion that the base period wages paid to an  
43 eligible individual in any calendar quarter by each such employer bears to the total wages paid  
44 by all base period employers during the base period. The amount allocated is multiplied by one  
45 hundred twenty percent (120%) and charged to that employer's account. Benefits paid are  
46 charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years  
47 have expired.

48 (b) Charging of Benefits After Separation. – Any benefits paid to a claimant under a  
49 claim filed for a period occurring after the date of separation for one of the reasons listed in this  
50 subsection may not be charged to the account of an employer by whom the claimant was  
51 employed at the time of separation if the employer promptly notifies the Division, in

1 accordance with rules adopted by the Division, of the applicable reason listed below for the  
2 separation:

3 (1) The claimant left work without good cause attributable to the employer.

4 (2) The employer discharged the claimant for misconduct in connection with his  
5 work.

6 (3) The employer discharged the claimant solely for a bona fide inability to do  
7 the work for which the individual was hired and the claimant's period of  
8 employment was 100 days or less.

9 (4) The separation is a disqualifying separation under G.S. 96-19.52.

10 (c) Benefits Not Chargeable. – The following benefit charges may not be made against  
11 an employer's account:

12 (1) Except as provided in G.S. 96-19.42, benefits paid as a result of a decision  
13 by the Division, if the decision to pay benefits is ultimately reversed.

14 (2) Any benefits paid to any claimant who is attending a vocational school or  
15 training program approved by the Division may not be charged to the  
16 account of the base period employers.

17 (3) Any benefits paid to any claimant where all of the following conditions are  
18 met:

19 a. The benefits are paid for unemployment due directly to a major  
20 natural disaster.

21 b. The President has declared the disaster pursuant to the Disaster  
22 Relief Act of 1970, 42 U.S.C. 4401, et seq.

23 c. The benefits are paid to claimants who would have been eligible for  
24 disaster unemployment assistance under this Act, if they had not  
25 received unemployment insurance benefits with respect to that  
26 unemployment.

27 (d) Current Employer in Base Period. – An employer who has furnished work to an  
28 individual who, because of the loss of employment with one or more other employers, becomes  
29 eligible for partial benefits while still being furnished work by such employer on substantially  
30 the same basis and substantially the same amount as had been made available to such  
31 individual during his base period, whether the employments were simultaneous or successive.  
32 An employer must file a written request with the Division for noncharging of benefits under  
33 this subdivision.

34 **"§ 96-19.42. Employer's reserve ratio.**

35 (a) Computation. – On August 1 of each year, the Division must determine the balance  
36 of each employer's account and compute a reserve ratio for the employer. At the same time the  
37 Division notifies an employer of the employer's contribution rate for the succeeding calendar  
38 year, it must furnish the employer with a statement of all charges and credits made to the  
39 employer's account. The employer may file an application for review or redetermination prior  
40 to May 1 following the effective date of the contribution rate.

41 (b) Credit Reserve Ratio. – For each employer whose account has a credit balance, the  
42 Division must compute a credit reserve ratio. An employer's credit reserve ratio is the quotient  
43 obtained by dividing the credit balance of the employer's account as of July 31 of each year by  
44 the total taxable payroll of the employer for the 36 calendar-month period ending June 30  
45 preceding the computation date. Credit balance as used in this subsection means the total of all  
46 contributions paid and credited for all past periods together with all other lawful credits to the  
47 account of the employer less the total benefits charged to the account of the employer for all  
48 past periods.

49 (c) Debit Reserve Ratio. – For each employer whose account shows that the total of all  
50 of its contributions paid and credited for all past periods together with all other lawful credits is  
51 less than the total benefits charged to its account for all past periods, the Division must

1 compute a debit reserve ratio. An employer's debit ratio is the quotient obtained by dividing the  
2 debit balance of the employer's account as of July 31 of each year by the total taxable payroll of  
3 the employer for the 36 calendar-month period ending June 30 preceding the computation date.  
4 The employer's debit balance is the total amount of all benefits charged to the employer's  
5 account for all past periods less the total amount of all contributions paid and credited in those  
6 periods, together with all other lawful credits of the employer.

7 (d) **Insufficient Employer Report.** – If, within the calendar month in which the  
8 computation date occurs, the Division finds that any employing unit failed to file a report or  
9 filed a report that the Division finds incorrect or insufficient, the Division must make an  
10 estimate of the information required from the employing unit on the basis of the best evidence  
11 reasonably available to it at the time. The Division must notify the employing unit of the  
12 estimates it will use to compute the employer's reserve ratio by registered mail addressed to its  
13 last known address. The Division must compute the employing unit's reserve ratio and  
14 contribution rate based upon those estimates unless the employing unit files a report or a  
15 corrected or sufficient report, as the case may be, within 15 days after the mailing of the notice.  
16 The rate so determined may be adjusted on the basis of subsequently ascertained information.

17 (e) **Active Duty.** – If the Division finds that an employer's business is closed solely  
18 because of the entrance of one or more of the owners, officers, partners, or the majority  
19 stockholder into the Armed Forces of the United States, or of any of its allies, or of the United  
20 Nations, the employer's experience rating account may not be terminated; and, if the business is  
21 resumed within two years after the discharge or release from active duty in the Armed Forces  
22 of the United States of such person or persons, the employer's account is deemed to have been  
23 chargeable with benefits throughout more than 13 consecutive calendar months ending July 31  
24 immediately preceding the computation date. This subsection applies only to employers who  
25 are liable for contributions under the experience rating system of financing unemployment  
26 benefits. This subsection does not apply to employers who are liable for payments in lieu of  
27 contributions or to employers using the reimbursable method of financing benefit payments  
28 under G.S. 96-19.32 or G.S. 96-19.33.

29 **"§ 96-19.43. Transfer of account.**

30 (a) **Mandatory.** – When an employer acquires all of the organization, trade, or business  
31 of another employing unit, the account of the predecessor shall be transferred as of the date of  
32 the acquisition to the successor employer for use in the determination of the successor's rate of  
33 contributions. This mandatory transfer does not apply when there is no common ownership  
34 between the predecessor and the successor and the successor acquired the assets of the  
35 predecessor in a sale in bankruptcy. In this circumstance, the successor's rate of contributions is  
36 determined without regard to the predecessor's rate of contributions.

37 (b) **Consent.** – When an employer acquires a distinct and severable portion of the  
38 organization, trade, or business of another employing unit, the part of the account of the  
39 predecessor that relates to the acquired portion of the business shall, upon the mutual consent of  
40 the parties concerned and approval of the Division in conformity with the regulations as  
41 prescribed therefor, be transferred as of the date of acquisition to the successor employer for  
42 use in the determination of the successor's rate of contributions, provided application for  
43 transfer is made within 60 days after the Division notifies the successor of the right to request  
44 such transfer, otherwise the effective date of the transfer shall be the first day of the calendar  
45 quarter in which such application is filed, and that after the transfer the successor employing  
46 unit continues to operate the transferred portion of such organization, trade, or business.  
47 Whenever part of an organization, trade, or business is transferred between entities subject to  
48 substantially common ownership, management, or control, the tax account shall be transferred  
49 in accordance with regulations. However, employing units transferring entities with any  
50 common ownership, management, or control are not entitled to separate and distinct employer  
51 status under this Chapter. Provided, however, that the transfer of an account for the purpose of

1 computation of rates shall be deemed to have been made prior to the computation date falling  
2 within the calendar year within which the effective date of such transfer occurs and the account  
3 shall thereafter be used in the computation of the rate of the successor employer for succeeding  
4 years, subject, however, to the provisions of subsection (d) of this section. No request for a  
5 transfer of the account will be accepted and no transfer of the account will be made if the  
6 request for the transfer of the account is not received within two years of the date of acquisition  
7 or notification by the Division of the right to request such transfer, whichever occurs later.  
8 However, in no event will a request for a transfer be allowed if an account has been terminated  
9 because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d)  
10 regardless of the date of notification.

11 (c) Employer Number. – A new employing unit shall not be assigned a discrete  
12 employer number when there is an acquisition or change in the form or organization of an  
13 existing business enterprise, or severable portion thereof, and there is a continuity of control of  
14 the business enterprise. That new employing unit shall continue to be the same employer for the  
15 purposes of this Chapter as before the acquisition or change in form. The following  
16 assumptions apply in this subsection:

17 (1) "Control of the business enterprise" may occur by means of ownership of the  
18 organization conducting the business enterprise, ownership of assets  
19 necessary to conduct the business enterprise, security arrangements or lease  
20 arrangements covering assets necessary to conduct the business enterprise,  
21 or a contract when the ownership, stated arrangements, or contract provide  
22 for or allow direction of the internal affairs or conduct of the business  
23 enterprise.

24 (2) A "continuity of control" will exist if one or more persons, entities, or other  
25 organizations controlling the business enterprise remain in control of the  
26 business enterprise after an acquisition or change in form. Evidence of  
27 continuity of control shall include, but not be limited to, changes of an  
28 individual proprietorship to a corporation, partnership, limited liability  
29 company, association, or estate; a partnership to an individual proprietorship,  
30 corporation, limited liability company, association, estate, or the addition,  
31 deletion, or change of partners; a limited liability company to an individual  
32 proprietorship, partnership, corporation, association, estate, or to another  
33 limited liability company; a corporation to an individual proprietorship  
34 partnership, limited liability company, association, estate, or to another  
35 corporation or from any form to another form.

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

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

7 (e) Deceased or Insolvent Employer. – In those cases where the organization, trade, or  
8 business of a deceased person, or insolvent debtor is taken over and operated by an  
9 administrator, executor, receiver, or trustee in bankruptcy, such employing units shall  
10 automatically succeed to the account and rate of contribution of such deceased person, or  
11 insolvent debtor without the necessity of the filing of a formal application for the transfer of  
12 such account.

13 **"§ 96-19.44. Program integrity.**

14 (a) Nonrelief of Charges. – The Division must charge benefits to an employer's account  
15 when it determines that an overpayment has been made to a claimant and it determines that  
16 both of the conditions in this subsection apply. If the claim is a combined-wage claim, the  
17 determination of noncharging for the combined-wage claim must be made by the paying state.  
18 If the response from the employer does not meet the criteria established by the paying state for  
19 an adequate or timely response, the paying state must promptly notify the transferring state of  
20 its determination and the employer must be appropriately charged. The Division may waive the  
21 prohibition for good cause.

22 (1) The overpayment occurred because the employer failed to respond timely or  
23 adequately to a written or electronic request of the Division for information  
24 relating to an unemployment compensation claim. A response is considered  
25 untimely if it fails to be made within the time allowed under  
26 G.S. 96-19.80(c). A response is considered inadequate if it fails to provide  
27 sufficient facts to enable the Division to make a correct determination of  
28 benefits. A response may not be considered inadequate if the Division fails  
29 to request the necessary information.

30 (2) The employer exhibits a pattern of failure to respond timely or adequately by  
31 failing to respond to written requests from the Division for information  
32 relating to an unemployment compensation claim on two or more occasions.  
33 If an employer uses a third-party agent to respond on its behalf to the  
34 Division, then the actions of the agent must be considered when determining  
35 a pattern of failure to respond timely or adequately. A pattern is established  
36 based on the agent's behavior overall and not only with respect to its  
37 behavior related to the employer.

38 (b) Applicability. – This section applies to erroneous payments established on or after  
39 October 1, 2013.

40 "Part 5. Benefit Eligibility.

41 **"§ 96-19.50. Register for work and file a valid claim.**

42 (a) Initial Determination. – An individual who is unemployed may file a claim for  
43 benefits. If the Division determines that the individual has registered for work and filed a valid  
44 claim, the individual may qualify for benefits as provided in this Part. A valid claim is one that  
45 meets the employment and wage standards set out below for the individual's base period:

46 (1) Employment. – The individual has been paid wages in at least two quarters  
47 of the individual's base period.

48 (2) Wages. – The individual has been paid wages totaling at least six times the  
49 average weekly insured wage during the individual's base period. If an  
50 individual lacks sufficient base period wages, then the wage standard for that  
51 individual may be determined using the alternative base period.

1        (b) Waiting Week. – An individual must serve a waiting period of one week with  
2 respect to each benefit claim filed.

3        (c) Qualifying Wages for Second Benefit Year. – An individual whose prior benefit  
4 year has expired and who files a new benefit claim is not entitled to benefits unless the  
5 individual has been paid qualifying wages since the beginning date of the prior benefit year and  
6 before the date the new benefit claim was filed equal to at least six times the average weekly  
7 insured wage and has been paid wages in at least two quarters of the individual's base period.

8 **"§ 96-19.51. Disqualification for benefits.**

9        (a) Disqualification Period. – The Division must determine whether an individual who  
10 has registered for work and filed a valid claim for benefits as required under G.S. 96-19.50 is  
11 qualified to receive benefits. A claimant's qualification for benefits is determined based on the  
12 reason for separation from employment from the individual's last permanent employer. The  
13 individual's last permanent employer is the employer for whom the claimant worked for more  
14 than 30 consecutive calendar days, regardless of whether the work was performed on all of  
15 those days. A claimant disqualified for benefits under this section may not receive any benefits  
16 for the entire one-year benefit period connected with that claim.

17        (b) Left Work Without Good Cause Attributable to the Employer. – A claimant is  
18 disqualified for benefits if it is determined by the Division that the claimant is unemployed  
19 because the claimant left work without good cause attributable to the employer. Where a  
20 claimant leaves work, the burden of showing good cause attributable to the employer rests on  
21 the claimant and the burden may not be shifted to the employer. Where an employee is notified  
22 by the employer that the employee will be separated from employment on some future date and  
23 the employee leaves work prior to this date because of the impending separation, the employee  
24 has left work voluntarily and the leaving is not considered good cause attributable to the  
25 employer.

26        The following circumstances are prima facie evidence of good cause attributable to the  
27 employer that may be rebutted by the employer:

28            (1) Reduction in hours. – Where an individual leaves work due solely to a  
29 unilateral and permanent reduction in work hours of more than fifty percent  
30 (50%) of the customary scheduled full-time work hours in the establishment,  
31 plant, or industry in which the individual was employed.

32            (2) Reduction in pay. – Where an individual leaves work due solely to a  
33 unilateral and permanent reduction in the individual's rate of pay of more  
34 than fifteen percent (15%).

35        (c) Misconduct. – An individual is disqualified for benefits if it is determined by the  
36 Division that the individual is, at the time such claim is filed, unemployed because the  
37 individual was discharged for misconduct connected with the work. Misconduct connected with  
38 the work is conduct evincing a willful or wanton disregard of the employer's interest as is found  
39 in deliberate violation or disregard of standards of behavior that the employer has the right to  
40 expect of an employee or has explained orally or in writing to an employee or conduct evincing  
41 carelessness or negligence of such degree or recurrence as to manifest an intentional and  
42 substantial disregard of the employer's interests or of the employee's duties and obligations to  
43 the employer.

44        The following examples are prima facie evidence of misconduct that may be rebutted by the  
45 claimant:

46            (1) Violating the employer's written alcohol or illegal drug policy.

47            (2) Reporting to work significantly impaired by alcohol or illegal drugs.

48            (3) Consuming alcohol or illegal drugs on employer's premises.

49            (4) Conviction by a court of competent jurisdiction for manufacturing, selling,  
50 or distribution of a controlled substance punishable under G.S. 90-95(a)(1)  
51 or G.S. 90-95(a)(2) if the offense is related to or connected with an

1 employee's work for an employer or is in violation of a reasonable work rule  
2 or policy.

3 (5) Being terminated or suspended from employment after arrest or conviction  
4 for an offense involving violence, sex crimes, or illegal drugs if the offense  
5 is related to or connected with an employee's work for an employer or is in  
6 violation of a reasonable work rule or policy.

7 (6) Any physical violence whatsoever related to an employee's work for an  
8 employer, including physical violence directed at supervisors, subordinates,  
9 coworkers, vendors, customers, or the general public.

10 (7) Inappropriate comments or behavior towards supervisors, subordinates,  
11 coworkers, vendors, customers, or to the general public relating to any  
12 federally protected characteristic which creates a hostile work environment.

13 (8) Theft in connection with the employment.

14 (9) Forging or falsifying any document or data related to employment, including  
15 a previously submitted application for employment.

16 (10) Violating an employer's written absenteeism policy.

17 (11) Refusing to perform reasonably assigned work tasks or failing to adequately  
18 perform employment duties as evidenced by no fewer than three written  
19 reprimands in the 12 months immediately preceding the employee's  
20 termination.

21 (d) Failure to Supply Necessary License. – An individual is disqualified for benefits if  
22 the Division determines that the individual is, at the time the claim is filed, unemployed  
23 because the individual has been discharged from employment because a license, certificate,  
24 permit, bond, or surety that is necessary for the performance of the individual's employment  
25 and that the individual is responsible to supply has been revoked, suspended, or otherwise lost  
26 to the individual, or the individual's ability to successfully apply or the individual's application  
27 therefor has been lost or denied for a cause that was within the individual's power to control,  
28 guard against, or prevent. No showing of misconduct connected with the work is required in  
29 order for an individual to be disqualified for benefits under this subsection.

30 (e) Labor Dispute. – An individual is disqualified for benefits if the Division  
31 determines the individual's total or partial unemployment is caused by a labor dispute in active  
32 progress at the factory, establishment, or other premises at which the individual is or was last  
33 employed or caused after such date by a labor dispute at another place within this State that is  
34 owned or operated by the same employing unit which owns or operates the factory,  
35 establishment, or other premises at which the individual is or was last employed and that  
36 supplies materials or services necessary to the continued and usual operation of the premises at  
37 which the individual is or was last employed. An individual disqualified under the provisions of  
38 this subsection continues to be disqualified after the labor dispute has ceased to be in active  
39 progress for a period of time that is reasonably necessary and required to physically resume  
40 operations in the method of operating in use at the plant, factory, or establishment of the  
41 employing unit.

42 (f) Self-Employed and Business Owners. – An individual is disqualified for benefits if  
43 the Division determines either of the following:

44 (1) The individual is customarily self-employed and can reasonably return to  
45 self-employment.

46 (2) The individual is, at the time the claim is filed, unemployed because the  
47 individual's ownership share of the employing entity was voluntarily sold  
48 and, at the time of the sale, one or more of the following existed:

49 a. The employing entity was a corporation and the individual held five  
50 percent (5%) or more of the outstanding shares of the voting stock of  
51 the corporation.

- 1                    b. The employing entity was a partnership, limited or general, and the  
2                    individual was a limited or general partner.
- 3                    c. The employing entity was a proprietorship, and the individual was a  
4                    proprietor.
- 5                    (g) Domestic violence. – A claimant may not be disqualified for benefits for leaving  
6                    work for reasons of domestic violence if the claimant reasonably believes that the claimant's  
7                    continued employment would jeopardize the safety of the claimant or of any member of the  
8                    claimant's immediate family. For the purposes of this subsection, a claimant may be a victim of  
9                    domestic violence if one or more of the following applies:
- 10                   (1) The claimant has been adjudged an aggrieved party as set forth by Chapter  
11                   50B of the General Statutes.
- 12                   (2) There is evidence of domestic violence, sexual offense, or stalking. Evidence  
13                   of domestic violence, sexual offense, or stalking may include any one or  
14                   more of the following:
- 15                   a. Law enforcement, court, or federal agency records or files.
- 16                   b. Documentation from a domestic violence or sexual assault program  
17                   if the claimant is alleged to be a victim of domestic violence or  
18                   sexual assault.
- 19                   c. Documentation from a religious, medical, or other professional from  
20                   whom the claimant has sought assistance in dealing with the alleged  
21                   domestic violence, sexual abuse, or stalking.
- 22                   (3) The claimant has been granted program participant status pursuant to  
23                   G.S. 15C-4 as the result of domestic violence committed upon the claimant  
24                   or upon a minor child with or in the custody of the claimant by an individual  
25                   who has or has had a familial relationship with the claimant or minor child.
- 26                   (h) Military Spouse. – A claimant may not be disqualified for benefits for leaving work  
27                   to accompany the claimant's spouse to a new place of residence because the spouse has been  
28                   reassigned from one military assignment to another.
- 29                   **"§ 96-19.52. Weekly certification.**
- 30                   (a) Requirements. – A claimant who files a valid claim and is determined by the  
31                   Division to qualify for benefits must be eligible to receive those benefits for each week in the  
32                   benefit period. To be eligible to receive a weekly benefit, a claimant must meet all of the  
33                   following requirements for each weekly benefit period:
- 34                   (1) File a claim for benefits.
- 35                   (2) Report at an employment office as requested by the Division.
- 36                   (3) Meet the work search requirements of subsection (b) of this section.
- 37                   (b) Work Search Requirements. – A claimant is eligible to receive benefits with respect  
38                   to any week only if the Division finds the claimant meets all of the following work search  
39                   requirements:
- 40                   (1) The individual is able to work.
- 41                   (2) The individual is available to work.
- 42                   (3) The individual is actively seeking work.
- 43                   (4) The individual accepts suitable work when offered.
- 44                   (c) Able to Work. – An individual is not able to work during any week that the  
45                   individual is receiving or is applying for benefits under any other State or federal law based on  
46                   the individual's temporary total or permanent total disability.
- 47                   (d) Available to Work. – An individual is not available to work during any week that  
48                   one or more of the following applies:
- 49                   (1) The individual tests positive for a controlled substance. An individual tests  
50                   positive for a controlled substance if all of the conditions of this subdivision

- 1 apply. An employer must report a claimant's positive test for a controlled  
2 substance to the Division.
- 3 a. The test is a controlled substance examination administered under  
4 Article 20 of Chapter 95 of the General Statutes.
- 5 b. The test is required as a condition of hire for a job.  
6 c. The job would be suitable work for the claimant.
- 7 (2) The individual is incarcerated or has received notice to report or is otherwise  
8 detained in any state or federal jail or penal institution. This subdivision does  
9 not apply to an individual who is incarcerated solely on a weekend in a  
10 county jail and who is otherwise available for work.
- 11 (3) The individual is an alien and is not in satisfactory immigration status under  
12 the laws administered by the United States Department of Justice,  
13 Immigration and Naturalization Service.
- 14 (e) Actively Seeking Work. – The Division's determination of whether an individual is  
15 actively seeking work is based upon the following:
- 16 (1) The individual is registered for employment services, as required by the  
17 Division.
- 18 (2) The individual has engaged in an active search for employment that is  
19 appropriate in light of the employment available in the labor market and the  
20 individual's skills and capabilities.
- 21 (3) The individual has sought work on at least two different days during the  
22 week and made at least two in-person job contacts with potential employers.
- 23 (4) The individual has maintained a record of the individual's work search  
24 efforts. The record must include the potential employers contacted, the  
25 method of contact, and the date contacted. The individual must provide the  
26 record to the Division upon request.
- 27 (f) Suitable Work. – The Division's determination of whether an employment offer is  
28 suitable must vary based upon the individual's length of unemployment as follows:
- 29 (1) During the first 10 weeks of a benefit period, the Division may consider the  
30 degree of risk involved to individual's health, safety, and morals; the  
31 individual's physical fitness and prior training and experience, the  
32 individual's prospects for securing local work in the individual's customary  
33 occupation, the distance of the available work from the individual's  
34 residence, and the individual's prior earnings.
- 35 (2) During the second 10 weeks of a benefit period, the Division must consider  
36 any employment offer paying one hundred twenty percent (120%) of the  
37 individual's weekly benefit amount to be suitable work.
- 38 (g) Job Attachment. – An individual who is partially unemployed and for whom the  
39 employer has filed an attached claim for benefits has satisfied the work search requirements for  
40 any given week in the benefit period associated with the attached claim if the Division  
41 determines the individual is available for work with the employer that filed the attached claim.
- 42 (h) Job Training. – An individual has satisfied the work search requirements for any  
43 given week if the Division determines for that week that one or more of the following applies:
- 44 (1) Trade Jobs for Success. – The individual is participating in the Trade Jobs  
45 for Success initiative under G.S. 143B-438.16.
- 46 (2) Reemployment Services. – The claimant is participating in the  
47 reemployment services as directed by the Division and is actively seeking  
48 work in a manner consistent with the planned reemployment services. The  
49 Division must refer a claimant to reemployment services if the Division  
50 finds that the claimant would likely exhaust regular benefits and need  
51 reemployment services to make a successful transition to new employment.

1           (3) Vocational School or Training Program. – The claimant is attending a  
2           vocational school or training program approved by the Division.

3           (i) Federal Labor Standards. – An otherwise eligible individual may not be denied  
4           benefits for a given week if the Division determines that for that week the individual refused to  
5           accept new work under one or more of the following conditions:

6           (1) The position offered is vacant due directly to a strike, lockout, or other labor  
7           dispute.

8           (2) The remuneration, hours, or other conditions of the work offered are  
9           substantially less favorable to the individual than those prevailing for similar  
10           work in the locality.

11           (3) The individual would be required to join a company union or to resign from  
12           or refrain from joining any bona fide labor organization as a condition of  
13           employment.

14           (j) Trade Act of 1974. – An otherwise eligible individual may not be denied benefits  
15           for any week because the individual is in training approved under Section 236(a)(1) of the  
16           Trade Act of 1974, nor may the individual be denied benefits by reason of leaving work to  
17           enter such training, provided the work left is not suitable employment, or because of the  
18           application to any such week in training of provisions in this law or of any applicable federal  
19           unemployment compensation law, relating to availability for work, active search for work, or  
20           refusal to accept work. For purposes of this subsection, the term "suitable employment" means  
21           with respect to an individual, work of a substantially equal or higher skill level than the  
22           individual's past adversely affected employment, as defined for purposes of the Trade Act of  
23           1974, and wages for such work at not less than eighty percent (80%) of the individual's average  
24           weekly wage as determined for the purposes of the Trade Act of 1974.

25           **"§ 96-19.53. Disqualification for the duration of the benefit period.**

26           (a) Duration. – A claimant who qualified to receive benefits under G.S. 96-19.50 may  
27           be disqualified from receiving benefits for the remaining duration of the unemployment period  
28           under this section if one or more subsections of this section apply. The period of  
29           disqualification under this section begins with the first day of the first week after the  
30           disqualifying act occurs with respect to the week an individual files a claim for benefits.

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

34           (1) Apply for available suitable work when so directed by the employment  
35           office of the Division.

36           (2) Accept suitable work when offered.

37           (3) Return to the individual's customary self-employment when so directed by  
38           the Division.

39           (c) Recall after Layoff. – An individual is disqualified for benefits if it is determined by  
40           the Division that the individual is, at the time a claim is filed, unemployed because the  
41           individual, without good cause attributable to the employer and after receiving notice from the  
42           employer, refused to return to work for a former employer under one or more of the following  
43           circumstances:

44           (1) The individual was recalled within four weeks from a layoff. As used in this  
45           subsection, the term "layoff" means a temporary separation from work due  
46           to no work available for the individual at the time of separation from work  
47           and the individual is retained on the employee's payroll and is a continuing  
48           employee subject to recall by the employer.

49           (2) The individual was recalled in any week in which the work search  
50           requirements were satisfied under G.S. 96-19.52(g).

51           **"§ 96-19.54. Disqualification for receipt of benefits.**



1 retirement or retired pay, annuity, or other payment that is reasonably attributable to such week  
2 or that is contributed to in part or in total by the individual's base period employers. The  
3 amount of all payments received by an individual under the Railroad Retirement Act must be  
4 deducted from the individual's benefit amount. Any weekly benefit amounts reduced under this  
5 subsection must be rounded to the nearest lower full dollar amount. The amount may not be  
6 reduced below zero.

7 (d) **Mandatory Withholding.** – The Division must withhold the following from a  
8 claimant's benefits, if applicable:

9 (1) **Child support obligations, as determined under G.S. 96-19.63.**

10 (2) **Overpayments of benefits, to the extent provided under G.S. 96-19.80.**

11 (e) **Voluntary Income Tax Withholding.** – Unemployment compensation is subject to  
12 federal and State individual income tax. A claimant may elect to have federal and State income  
13 tax withheld from the claimant's weekly benefit amount as provided in this subsection. The  
14 Division must follow the procedures specified by the United States Department of Labor, the  
15 Internal Revenue Service, and the Department of Revenue pertaining to the deducting and  
16 withholding of individual income tax. The amounts deducted and withheld from unemployment  
17 compensation remain in the Unemployment Insurance Fund until transferred to the appropriate  
18 taxing authority as a payment of income tax. When an individual files a new claim for  
19 unemployment compensation, the individual must be advised in writing at the time of filing  
20 that:

21 (1) **Unemployment compensation is subject to federal and State individual**  
22 **income tax.**

23 (2) **Requirements exist pertaining to estimated tax payments.**

24 (3) **The individual may elect to have federal individual income tax deducted and**  
25 **withheld from the individual's payment of unemployment compensation at**  
26 **the amount specified in section 3402 of the Internal Revenue Code.**

27 (4) **The individual may elect to have State individual income tax deducted and**  
28 **withheld from the individual's payment of unemployment compensation in**  
29 **an amount determined by the individual.**

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

31 (f) **Administration.** – The Division must establish and maintain individual wage record  
32 accounts for each individual who earns wages in covered employment for as long as the wages  
33 would be included in a determination of benefits. If two or more deductions are made from an  
34 individual's unemployment compensation payment, then the deductions must be deducted and  
35 withheld in accordance with priorities established by the Division.

36 **"§ 96-19.61. Duration of benefits.**

37 (a) **Total Benefit Amount.** – The total amount of benefits paid to an individual may not  
38 exceed the individual's total benefit amount. The total benefit amount for an individual is  
39 determined as follows:

40 (1) **Divide the individual's base-period wages by the average of the wages paid**  
41 **to the individual in the last two completed quarters of the base period.**

42 (2) **Multiplying that quotient by eight and two-thirds.**

43 (3) **Round the product to the nearest whole number.**

44 (4) **Multiply the resulting amount by the individual's weekly benefit amount as**  
45 **determined under G.S. 96-19.60.**

46 (b) **Duration.** – The number of weeks an individual may receive benefits varies  
47 depending on the seasonal adjusted statewide unemployment rate in use at the time the regular  
48 unemployment claim is filed. The total benefits paid to an individual may not be less than the  
49 individual's average weekly benefit amount multiplied by the minimum number of weeks  
50 allowed under the table in subsection (c) of this section. The total benefits paid to an individual  
51 may not exceed the lesser of the following:

- 1           (1)    The individual's average weekly benefit amount multiplied by the maximum
- 2                   number of weeks allowed under the table in subsection (c) of this section.
- 3           (2)    The individual's total benefit allowed, as calculated under subsection (a) of
- 4                   this section.

5           (c)    Unemployment Rate in Use. – The minimum and maximum number of weeks  
6           allowed for a claim filed during a six-month base period depends on the seasonal adjusted  
7           statewide unemployment rate in use for that base period. One six-month base period begins on  
8           July 1 and one six-month base period begins on January 1. For the period beginning July 1, the  
9           Division must use the most recently available seasonal adjusted unemployment rate for the  
10           State for the preceding month of April. For the base period that begins January 1, the Division  
11           must use the most recently available seasonal adjusted unemployment rate for the preceding  
12           month of October. The seasonal adjusted unemployment rate the Division uses must be the  
13           most recent one determined by U.S. Department of Labor, Bureau of Labor Statistics; it is not  
14           the rate as revised in the annual benchmark.

<u>Seasonal Adjusted</u> <u>UI Rate</u>	<u>Minimum Number</u> <u>of Weeks</u>	<u>Maximum Number</u> <u>of Weeks</u>
<u>Less than or equal to 5.5%</u>	<u>5</u>	<u>12</u>
<u>Greater than 5.5% up to 6%</u>	<u>6</u>	<u>13</u>
<u>Greater than 6% up to 6.5%</u>	<u>7</u>	<u>14</u>
<u>Greater than 6.5% up to 7%</u>	<u>8</u>	<u>15</u>
<u>Greater than 7% up to 7.5%</u>	<u>9</u>	<u>16</u>
<u>Greater than 7.5% up to 8%</u>	<u>10</u>	<u>17</u>
<u>Greater than 8% up to 8.5%</u>	<u>11</u>	<u>18</u>
<u>Greater than 8.5% up to 9%</u>	<u>12</u>	<u>19</u>
<u>Greater than 9%</u>	<u>13</u>	<u>20</u>

26           (d)    Limitation of Benefits for Business Owners. – This subsection limits the number of  
27           weeks an individual may receive benefits to the lesser of six weeks or the applicable weeks  
28           determined under this subsection (b) of this section. This subsection applies to an individual  
29           who is unemployed based on services performed for a corporation in which the individual held  
30           five percent (5%) or more of the outstanding shares of the voting stock of the corporation.

31           **§ 96-19.62. Services provided to an educational institution.**

32           (a)    Individuals Employed by Educational Institutions in a Professional Capacity. – This  
33           subsection applies to individuals who provide services to or on behalf of an educational  
34           institution in an instructional, research, or principal administrative capacity, regardless of  
35           whether the individual is employed by the institution or by an educational service agency.  
36           Benefits are not payable to an individual to whom this subsection applies for any week  
37           described below:

- 38           (1)    Academic terms. – For any week commencing during the period between  
39                   two successive academic years or terms or, when an agreement provides  
40                   instead for a similar period between two regular but not successive terms,  
41                   during that period, if the individual performs services in the first of the  
42                   academic years or terms and there is a contract or reasonable assurance that  
43                   the individual will perform services in any such capacity for any educational  
44                   institution in the second of the academic years or terms.
- 45           (2)    Holiday recess. – For any week commencing during an established and  
46                   customary vacation period or holiday recess, and there is a reasonable  
47                   assurance that the individual will perform the services in the period  
48                   immediately following the vacation period or holiday recess.

49           (b)    Individuals Employed by Educational Institutions in any other Capacity. – This  
50           subsection applies to individuals who provide services to or on behalf of an educational  
51           institution in any capacity other than a capacity described in subsection (a) of this section,

1 regardless of whether the individual is employed by the institution or by an educational service  
2 agency. Benefits are not payable to an individual to whom this subsection applies for any week  
3 described below:

4 (1) Academic terms. – For any week commencing during the period between  
5 two successive academic years or terms or, when an agreement provides  
6 instead for a similar period between two regular but not successive terms,  
7 during that period, if the individual performs services in the first of the  
8 academic years or terms and there is a contract or reasonable assurance that  
9 the individual will perform services in any such capacity for any educational  
10 institution in the second of the academic years or terms. If benefits are  
11 denied to an individual under this subdivision and the individual was not  
12 offered an opportunity to perform such services for the educational  
13 institution for the second of the academic years or terms, the individual is  
14 entitled to a retroactive payment of the compensation for each week for  
15 which the individual filed a timely claim for compensation and for which  
16 compensation was denied solely by reason of this subdivision.

17 (2) Holiday recess. – For any week commencing during an established and  
18 customary vacation period or holiday recess, and there is a reasonable  
19 assurance that the individual will perform the services in the period  
20 immediately following the vacation period or holiday recess.

21 (c) Educational Service Agency. – The term "educational service agency" has the same  
22 meaning as defined in section 3304 of the Code.

23 **"§ 96-19.63. Professional athletes; aliens.**

24 (a) Professional Athletes. – Benefits are not payable to an individual on the basis of any  
25 services, substantially all of which consist of participating in sports or athletic events or  
26 training or preparing to so participate, for any week which commences during the period  
27 between two successive sport seasons or periods if the individual performs services in the first  
28 season or period and there is a reasonable assurance that the individual will perform services in  
29 the latter season or period.

30 (b) Illegal Aliens. – Benefits are not payable to an individual on the basis of any  
31 services performed by an alien unless the alien was lawfully admitted for permanent residence  
32 at the time the services were performed, was lawfully present for purposes of performing the  
33 services, or was permanently residing in the United States under the color of law. A claimant  
34 present in the United States as a result of the application of the provisions of the federal  
35 Immigration and Nationality Act is considered to be an alien lawfully present in the United  
36 States.

37 Any data or information required of a claimant to determine whether or not benefits are  
38 payable based upon the claimant's alien status must be uniformly required from all individuals  
39 making a claim for benefits. A determination that benefits are not payable to a claimant because  
40 of the claimant's alien status may be made only upon a preponderance of the evidence.

41 **"§ 96-19.64. Deduction for child support obligations.**

42 (a) Definitions. – The following definitions apply in this section:

43 (1) Child support obligation. – Obligations that are being enforced pursuant to a  
44 plan described in section 454 of the Social Security Act which has been  
45 approved by the Secretary of Health and Human Services under Part D of  
46 Title IV of the Social Security Act.

47 (2) State or local child support enforcement agency. – An agency of this State or  
48 a political subdivision thereof operating pursuant to a plan described in  
49 subdivision (1) of this subsection.

50 (3) Unemployment compensation. – Any compensation found by the Division to  
51 be payable to an unemployed individual under the Employment Security

1 Law of North Carolina, including amounts payable by the Division pursuant  
2 to an agreement under any federal law providing for compensation,  
3 assistance, or allowances with respect to unemployment.

4 (b) Withholding of Child Support Obligation. – An individual filing a new claim for  
5 unemployment compensation shall, at the time of filing the claim, disclose whether the  
6 individual owes child support obligations. If an individual discloses that he or she owes child  
7 support obligations and the Division determines that the individual is eligible to receive  
8 unemployment compensation, the Division shall notify the State or local child support  
9 enforcement agency enforcing the child support obligation that the individual has been  
10 determined to be eligible for payment of unemployment compensation. Upon payment by the  
11 State or local child support enforcement agency of the processing fee in subsection (c) of this  
12 section and beginning with any payment of unemployment compensation that would be made  
13 to the individual during the current benefit year and more than five working days after the  
14 receipt of the processing fee by the Division, the Division shall deduct and withhold from any  
15 unemployment compensation otherwise payable to an individual the amount of child support  
16 obligation owed. Any amount deducted and withheld under this section is treated as if it were  
17 paid to the individual as unemployment compensation and then paid by the individual to the  
18 State or local child support enforcement agency in satisfaction of the individual's child support  
19 obligations. The amount of child support obligation owed is the first applicable amount listed  
20 below:

- 21 (1) The amount required to be deducted and withheld from unemployment  
22 compensation under a properly served legal process, as that term is defined  
23 in section 462(e) of the Social Security Act.
- 24 (2) The amount determined pursuant to an agreement submitted to the Division  
25 under section 454(20)(B)(i) of the Social Security Act by the State or local  
26 child support enforcement agency.
- 27 (3) The amount specified by the individual to the Division to be deducted and  
28 withheld.

29 (c) Agreement to Withhold. – The Department of Health and Human Services and the  
30 Division may enter into one or more agreements that provide for the payment to the  
31 Department of Health and Human Services of child support obligations withheld from an  
32 individual's unemployment compensation benefits. The agreement may provide that these  
33 payments will be made on an open account basis. The agreement must provide reimbursement  
34 to the Division by the State or local child support agency for all administrative costs incurred  
35 by the Division attributable to the requirements of this section. On or before April 1 of each  
36 year, the Division must set a schedule of processing fees applicable for the upcoming fiscal  
37 year that reflects the Division's best estimate of the administrative costs to the Division of  
38 implementing this section. The Division must forward the fee schedule to the Secretary of  
39 Health and Human Services. The Division shall begin withholding child support obligations  
40 from a recipient's unemployment compensation benefits on the date it receives a written  
41 authorization from the Department of Health and Human Services to charge the processing fee  
42 to its account with respect to the individual name in the authorization.

43 "Part 7. Extended Benefits.

44 **"§ 96-19.70. Extended benefit period.**

45 (a) Extended Benefit Period. – The State must provide an extended benefit period for a  
46 period beginning the third week after a week for which there is an "on indicator" and ends with  
47 the latter of the third week after the first week for which there is an "off indicator" or the 13th  
48 consecutive week of such period. No extended benefit period may begin before the 14th week  
49 following the end of a prior extended benefit period which was in effect with respect to this  
50 State.

1       (b) "On Indicator". – There is an "on indicator" for this State for a week if the Division  
2 determines, in accordance with the regulations of the United States Secretary of Labor, that for  
3 the period consisting of such week and the immediate preceding 12 weeks, the rate of insured  
4 unemployment, not seasonally adjusted, under this Chapter meets both of the following  
5 conditions:

6           (1) Equaled or exceeded one hundred twenty percent (120%) of the average of  
7 such rates for the corresponding 13-week period ending in each of the  
8 preceding two calendar years.

9           (2) Equaled or exceeded five percent (5%).

10       (c) "Off Indicator". – There is an "off indicator" for this State for a week if the Division  
11 determines, in accordance with the regulations of the United States Secretary of Labor, that for  
12 the period consisting of such week and the immediately preceding 12 weeks, the rate of insured  
13 unemployment, not seasonally adjusted, under this Chapter meets at least one of the following  
14 conditions:

15           (1) Was less than one hundred twenty percent (120%) of the average of such  
16 rates for the corresponding 13-week period ending in each of the preceding  
17 two calendar years and was less than six percent (6%).

18           (2) Was less than five percent (5%).

19 **"§ 96-19.71. Federally funded extended benefit period.**

20 The State may only provide an extended benefit period under this section if the federal  
21 government funds one hundred percent (100%) of the costs of the extended benefits.

22           (1) There may be an "on indicator" for this State for a week if the Division  
23 determines, in accordance with the regulations of the United States Secretary  
24 of Labor, that for the period consisting of such week and the immediate  
25 preceding 12 weeks, the rate of insured unemployment, not seasonally  
26 adjusted, under this Chapter equaled or exceeded six percent (6%). The "off  
27 indicator" for this period is the same as provided in G.S. 96-19.70.

28           (2) There may be an "on indicator" for this State for a week when the average  
29 rate of total unemployment, seasonally adjusted, as determined by the United  
30 States Secretary of Labor, for the period consisting of the most recent three  
31 months for which data for all states are published before the close of such  
32 week equals or exceeds a six and one-half percent (6.5%), and the average  
33 rate of total unemployment in the State, seasonally adjusted, as determined  
34 by the United States Secretary of Labor, for the same three-month period  
35 equals or exceeds one hundred ten percent (110%) of such average for either  
36 or both of the corresponding three-month periods ending in the two  
37 preceding calendar years. There is a State "off indicator" for a week under  
38 this subdivision, only if, for the period consisting of such week and the  
39 immediately preceding 12 weeks, the option specified in this subdivision  
40 does not result in an "on indicator".

41 **"§ 96-19.72. Eligibility for extended benefits.**

42       (a) Eligibility. – An individual is eligible to receive extended benefits with respect to  
43 any week of unemployment in the eligibility period only if the Division finds that with respect  
44 to such week:

45           (1) The individual is an exhaustee, as defined in subsection (b) of this section.

46           (2) The individual has satisfied the requirements of this Chapter for the receipt  
47 of regular benefits that are applicable to individuals claiming extended  
48 benefits, including not being subject to a disqualification for the receipt of  
49 benefits. For purposes of disqualification for extended benefits, the term  
50 "suitable work" means any work which is within the individual's capabilities  
51 to perform if all of the following conditions are met:

- 1           a.     The gross average weekly remuneration payable for the work  
2           exceeds the sum of the individual's weekly extended benefit amount  
3           plus the amount, if any, of supplemental unemployment benefits, as  
4           defined in section 501(C)(17)(D) of the Code, payable to such  
5           individual for such week.
- 6           b.     The gross wages payable for the work equal the higher of the  
7           minimum wages provided by section 6(a)(1) of the Fair Labor  
8           Standards Act of 1938 as amended (without regard to any  
9           exemption), or the State minimum wage.
- 10          c.     The work is offered to the individual in writing and is listed with the  
11          State employment service.
- 12          d.     The considerations contained in G.S. 96-19.53 for determining  
13          whether or not work is suitable are applied to the extent that they are  
14          not inconsistent with the specific requirements of this subdivision.
- 15          e.     The individual cannot furnish evidence satisfactory to the Division  
16          that the prospects for obtaining work in the individual's customary  
17          occupation within a reasonably short period of time are good. If the  
18          individual submits evidence that the Division determines is  
19          satisfactory for this purpose, the determination of whether or not  
20          work is suitable with respect to such individual shall be made in  
21          accordance with G.S. 96-19.53 without regard to the definition  
22          contained in this subdivision.
- 23          (3)    The individual has not failed either to apply for or to accept an offer of  
24          suitable work referred to the individual by an employment office of the  
25          Division, and the individual has furnished the Division with tangible  
26          evidence that the individual has actively engaged in a systematic and  
27          sustained effort to find work. If an individual is found to be ineligible under  
28          this subdivision, the individual shall be ineligible beginning with the week  
29          that the individual either failed to apply for or to accept the offer of suitable  
30          work or failed to furnish the Division with tangible evidence of being  
31          actively engaged in a systematic and sustained effort to find work. An  
32          individual determined ineligible under this subdivision remains ineligible for  
33          extended benefits until the individual has been employed in each of four  
34          subsequent weeks and has earned remuneration equal to not less than four  
35          times the individual's weekly benefit amount.
- 36          (4)    An individual shall not be eligible for extended compensation unless the  
37          individual had 20 weeks of full-time insured employment, or the equivalent  
38          in insured wages, as determined by a calculation of base period wages based  
39          upon total hours worked during each quarter of the base period and the  
40          hourly wage rate for each quarter of the base period. For the purposes of this  
41          subdivision, the equivalent in insured wages shall be earnings covered by the  
42          State law for compensation purposes which exceed 40 times the individual's  
43          most recent weekly benefit amount or one and one-half times the individual's  
44          insured wages in that calendar quarter of the base period in which the  
45          individual's insured wages were the highest.
- 46          (b)    Exhaustee. – The term "exhaustee" means an individual who, with respect to any  
47          week of unemployment in the individual's eligibility period meets each of the following  
48          conditions:
- 49                (1)    Has received, prior to such week, all of the regular benefits that were  
50                available to the individual under this Chapter or any other State law. If the  
51                individual's benefit year has expired prior to such week, the individual does

1 not have sufficient wages on the basis of which a new benefit year would  
2 include such week.

3 (2) Has no right to unemployment benefits or allowances, as the case may be,  
4 under the Railroad Unemployment Insurance Act, the Trade Expansion Act  
5 of 1962, the Automotive Products Trade Act of 1965, and such other federal  
6 laws as are specified in regulations issued by the United States Secretary of  
7 Labor.

8 (3) Has not received unemployment benefits under the unemployment  
9 compensation law of Canada.

10 **"§ 96-19.73. Benefit Amount and Duration.**

11 (a) Weekly Extended Benefit Amount. – The weekly extended benefit amount payable  
12 to an individual for a week of total unemployment in his eligibility period shall be an amount  
13 equal to the weekly benefit amount payable to him during his applicable benefit year. For any  
14 individual who was paid benefits during the applicable benefit year in accordance with more  
15 than one weekly benefit amount, the weekly extended benefit amount shall be the average of  
16 such weekly benefit amounts rounded to the nearest lower full dollar amount (if not a full dollar  
17 amount). Provided, that for any week during a period in which federal payments to states under  
18 Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, P.L.  
19 91-373, are reduced under an order issued under Section 252 of the Balanced Budget and  
20 Emergency Deficit Control Act of 1985, P.L. 99-177, the weekly extended benefit amount  
21 payable to an individual for a week of total unemployment in his eligibility period shall be  
22 reduced by a percentage equivalent to the percentage of the reduction in the federal payment.  
23 The reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to  
24 the nearest lower full dollar amount.

25 (b) Extended Benefit Duration. – Except as provided in subsection (c) of this section,  
26 the total extended benefit amount payable to any eligible individual with respect to his  
27 applicable benefit year is fifty percent (50%) of the total amount of regular benefits which were  
28 payable to the individual under this Chapter in the applicable benefit year.

29 (c) End of Extended Benefit Payments. – If the benefit year of any individual ends  
30 within an extended benefit period, the remaining balance of extended benefits that such  
31 individual would be entitled to receive in that extended benefit period, with respect to weeks of  
32 unemployment beginning after the end of the benefit year, shall be reduced by the product of  
33 the number of weeks for which the individual received any amounts as trade readjustment  
34 allowances within that benefit year, multiplied by the individual's weekly benefit amount for  
35 extended benefits. This amount may not be reduced below zero.

36 **"§ 96-19.74. Charging of benefits to accounts.**

37 The federal share of any extended benefits may not be charged to the account of a  
38 taxpaying employer, but the State share of those benefits are chargeable to the account of the  
39 taxpaying employer to the same extent regular benefits payable to the claimant are chargeable  
40 to the account of that employer under G.S. 96-19.41. Any extended benefits that are one  
41 hundred percent (100%) federally financed may not be charged in any percentage to a  
42 taxpaying employer's account.

43 The federal and State share of extended benefits is chargeable to the account of a base  
44 period employer who is a nonprofit entity, governmental entity, or Indian tribe as provided in  
45 G.S. 96-19.32 and G.S. 96-19.33.

46 **"§ 96-19.75. Administration.**

47 Extended benefits must be administered in accordance with the Federal-State  
48 Unemployment Compensation Act of 1970. Claims and payments of extended benefits are to  
49 be administered in the same manner as regular benefits. A claimant who is filing an interstate  
50 claim under the interstate benefit payment plan is eligible for extended benefits for no more  
51 than two weeks when there is an "off indicator" in the state where the claimant files.

1 Whenever an extended benefit period is to become effective in this State as a result of an  
2 "on" indicator, or an extended benefit period is to be terminated in this State as a result of an  
3 "off" indicator, the Division must make an appropriate public announcement.

4 "Part 8. Administration.

5 **"§ 96-19.80. Claims for benefits.**

6 (a) ~~Filing Generally.~~ – Claims for benefits shall ~~must~~ be made in accordance with ~~such~~  
7 ~~regulations as the Division may prescribe.~~ rules adopted by the Division. ~~Employers may file~~  
8 ~~claims for employees through the use of automation in the case of partial unemployment. Each~~  
9 ~~employing unit shall post and maintain in places readily accessible to individuals performing~~  
10 ~~services for it printed statements, concerning benefit rights, claims for benefits, and such other~~  
11 ~~matters relating to the administration of this Chapter as the Division may direct. Each~~  
12 ~~employing unit shall supply to such individuals copies of such printed statements or other~~  
13 ~~materials relating to claims for benefits as the Division may direct. Such~~ An employer must  
14 ~~provide individuals providing services for the employer access to information concerning the~~  
15 ~~unemployment compensation program. The Division must supply an employer with any printed~~  
16 ~~statements and other materials shall be supplied by the Division.~~ the Division requires an  
17 ~~employer provide to individuals to each employing unit without cost to the employing~~  
18 ~~unit.~~ employer.

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

26 An employer may file an attached claim under this subsection only if the employer has a  
27 positive credit balance in its account as determined under Part 4 of this Article. If an employer  
28 does not have a positive credit balance in its account, the employer must remit to the Division  
29 an amount equal to the amount necessary to bring the employer's negative credit balance to at  
30 least zero at the time the employer files the attached claim.

31 (b) (1) ~~Initial~~ Initial Determination. – A representative designated by the Division shall  
32 must promptly examine the claim and ~~shall~~ determine whether or not the claim is valid. If the  
33 claim is determined to be not valid for any reason other than lack of base period earnings, the  
34 claim shall must be referred to an Adjudicator for a decision as to the issues presented. If the  
35 claim is determined to be valid, a monetary determination shall ~~be~~ must be issued showing the  
36 week with respect to when benefits shall ~~commence~~, the weekly benefit amount payable, and  
37 the potential maximum ~~duration thereof.~~ duration of benefits. The Division must furnish the  
38 claimant shall be furnished a copy of ~~such~~ the monetary determination showing the amount of  
39 wages paid ~~him~~ the individual by each employer during ~~his~~ the individual's base period and the  
40 employers by whom ~~such~~ the wages were paid, ~~his~~ the benefit year, weekly benefit amount, and  
41 the maximum amount of benefits that may be paid to ~~him~~ the claimant for unemployment  
42 during the benefit year. When a claim is not valid due to lack of earnings in ~~his~~ the base period,  
43 ~~the determination shall so designate. The claimant shall be~~ claimant is allowed 10 days from the  
44 earlier of mailing or delivery of ~~his~~ the monetary determination to the claimant ~~him~~ within  
45 which to protest his ~~the~~ monetary determination and ~~determination.~~ determination. When a protest is ~~upon the~~  
46 ~~filing of such protest, unless said protest be satisfactorily resolved, the claim shall filed, it must~~  
47 ~~be referred to the Assistant Secretary or designee for a decision as to the issues presented.~~  
48 Presented, unless the protest has already been satisfactorily resolved. The Division must notify  
49 all ~~all~~ base period employers, as well as the most recent employer of a claimant on a temporary  
50 layoff, shall be notified upon the filing of a claim ~~which~~ that establishes a benefit year.

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

6 ~~(2) Adjudication.~~ (c) Adjudication. – When a protest is made by the claimant to  
7 the initial or monetary determination, or a question or issue is raised ~~or presented~~ as to the  
8 eligibility of a claimant ~~under G.S. 96-13,~~ under Part 5 of this Article, or whether any  
9 disqualification should be imposed ~~under G.S. 96-14,~~ Part 5 of this Article, or benefits are  
10 denied or adjusted pursuant to G.S. 96-18, under Parts 5 or 6 of this Article, the Division shall  
11 refer the matter ~~shall be referred~~ to an adjudicator. The adjudicator may consider any matter,  
12 ~~document~~ document, or statement deemed to be pertinent to the issues, including telephone  
13 conversations, and after ~~such~~ consideration shall render a conclusion as to the claimant's benefit  
14 entitlements. The adjudicator ~~shall~~ must notify the claimant and all other interested parties of  
15 the conclusion reached. The conclusion of the adjudicator ~~shall be deemed~~ is the final decision  
16 of the Division unless within 30 days after the date of notification or mailing of the conclusion,  
17 whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The  
18 Division shall be deemed an interested party for such purposes and may remove to itself or  
19 transfer to an appeals referee the proceedings involving any claim pending before an  
20 adjudicator.

21 ~~Provided, any~~ Any interested employer ~~shall be~~ is allowed 10 days from the delivery of the  
22 notice of the filing of a claim against the employer's account to protest the claim and have the  
23 claim referred to an adjudicator for a decision on the question or issue raised. The Division  
24 must send contemporaneously to the employer ~~A~~ a copy of the notice of the filing. ~~filing shall~~  
25 ~~be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on~~  
26 ~~file. Provided further, no~~ No question or issue may be raised ~~or presented~~ by the Division as to  
27 the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be  
28 imposed under G.S. 96-14, after 45 days from the first day of the first week after the question  
29 or issue occurs with respect to ~~which~~ that week an individual filed a claim for benefits. ~~None of~~  
30 ~~the provisions of this subsection shall have the force and effect nor shall the same be construed~~  
31 ~~or interpreted as repealing any other provisions of G.S. 96-18.~~

32 ~~An~~ The Division shall provide an employer ~~shall receive with the~~ written notice of the  
33 employer's appeal rights and any forms that are required to allow the employer to protest the  
34 claim. The forms ~~shall~~ must include a section referencing the appropriate rules pertaining to  
35 appeals and the instructions on how to appeal.

36 (c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee  
37 or hearing officer ~~shall~~ must set a hearing in which the parties are given reasonable opportunity  
38 to be heard. The conduct of hearings ~~shall be~~ is governed by ~~suitable~~ rules adopted by the  
39 Division. The rules need not conform to common law or statutory rules of evidence or technical  
40 or formal rules of procedure but ~~shall~~ must provide for the conduct of hearings ~~in such~~ in a  
41 manner as to that will ascertain the ~~substantial~~ rights of the parties. The hearings may be  
42 conducted by conference telephone call or other similar means provided that if any party files  
43 with the Division prior written objection to the telephone procedure, that party will be afforded  
44 an opportunity for an in-person hearing at such place in the State as the Division by rule ~~shall~~  
45 ~~provide.~~ provides. The hearing ~~shall~~ must be scheduled for a time that, as much as practicable,  
46 least intrudes on and reasonably accommodates the ordinary business activities of an employer  
47 and the return to employment of a claimant. The appeals referee or hearing officer may affirm  
48 or modify the conclusion of the adjudicator ~~or and~~ issue a new an appeals decision in which  
49 findings of fact and conclusions of law ~~will be~~ are set out or dismiss an appeal when the  
50 appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly  
51 notified of the appeals hearing. The evidence taken at the hearings before the appeals referee

1 shall be recorded and the ~~decision of the appeals referee shall be deemed to be~~ appeals decision  
2 is the final decision of the Division unless within 10 days after the date of notification or  
3 mailing of the decision, whichever is ~~earlier~~ earlier, a written appeal is filed pursuant to ~~such~~  
4 rules as adopted by the Board of Review and the Division may adopt. Division. No person may  
5 be appointed as an appeals referee or hearing officer unless he or she possesses the minimum  
6 qualifications necessary to be a staff attorney eligible for designation by the Division as a  
7 hearing officer under G.S. 96-4(q). No appeals referee or hearing officer in full-time permanent  
8 status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in  
9 office as appeals referee or hearing ~~officer~~ officer. A violation of this prohibition ~~shall be~~  
10 grounds for removal. Whenever an appeal is taken from a ~~decision of the appeals referee or~~  
11 hearing officer; an appeals decision, the appealing party ~~shall~~ must submit a clear written  
12 statement containing the grounds for the appeal within the time allowed by law for taking the  
13 appeal, and if ~~such a~~ timely statement is not submitted, the Board of Review may dismiss the  
14 appeal.

15 ~~(e1)~~ Unless required for disposition of an ex parte matter authorized by law, the ~~Division,~~  
16 Board of Review, appeals referee, or employee assigned to make a decision or to make findings  
17 of facts and conclusions of law in a case shall not communicate, directly or indirectly, in  
18 connection with any issue of fact, or question of law, with any person or party or his  
19 representative, except on notice and opportunity for parties to participate.

20 ~~(e2)~~ Whenever a party is notified of the appeals decision ~~the Board of Review's or a hearing~~  
21 officer's decision by mail, G.S. 1A-1, Rule 6(e) shall apply, and three days shall be added to the  
22 prescribed period to file a written appeal.

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

24 (d1) Continuance. – No continuance ~~shall~~ may be granted except upon application to the  
25 Division, the appeals referee, or other authority assigned to make the decision in the matter to  
26 be continued. A continuance may be granted only for good cause shown and upon such terms  
27 and conditions as justice may require. Good cause for granting a continuance ~~shall include, but~~  
28 not be limited to, includes those instances when a party to the proceeding, a witness, or counsel  
29 of record has an obligation of service to the State, such as service as a member of the North  
30 Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater  
31 jurisdiction.

32 (e) Review by the Board of Review. – The Board of Review may on its own motion  
33 affirm, modify, or set aside any appeals decision ~~of an appeals referee, hearing officer, or other~~  
34 ~~employee assigned to make a decision~~ on the basis of the evidence previously submitted in  
35 such a case, or direct the taking of additional evidence, or may permit any of the parties to ~~such~~  
36 the decision to initiate further appeals before it, or may provide for group hearings in ~~such~~  
37 cases as the Board of Review finds appropriate. Upon a motion of a party or the Division, the  
38 ~~The Board of Review may remove to itself or transfer to an appeals referee, a hearing officer,~~  
39 ~~or other employee assigned to make a decision~~ officer the proceedings on any claim pending  
40 before ~~an a~~ Division appeals referee, hearing officer, or other employee assigned to make a  
41 decision. A proceeding transferred by the Board to a hearing officer is subject to review by the  
42 Board only upon a request by a party to the proceeding for reconsideration. ~~Interested parties~~  
43 The Board of Review shall be promptly notified ~~notify the interested parties of the its findings~~  
44 ~~and decision of the Board of Review.~~ decision.

45 (f) Procedure. – The manner in which disputed claims ~~shall be~~ are presented, the reports  
46 ~~thereon~~ required from the claimant and from employers, and the conduct of hearings and  
47 appeals shall be in accordance with rules adopted by the Division for determining the rights of  
48 the parties, whether or not such ~~regulations~~ rules conform to common-law or statutory rules of  
49 evidence and other technical rules of procedure.

50 All testimony at any hearing before an appeals referee upon a disputed claim shall be  
51 recorded unless the recording is waived by all interested parties. If the testimony is recorded, it

1 need not be transcribed unless the disputed claim is further appealed and, one or more of the  
2 parties objects, under ~~such~~ rules as the Division may adopt, to being provided a copy of the  
3 tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any  
4 individual receiving the transcript shall pay a fee to the Division ~~such reasonable fee~~ for the  
5 transcript as the Division may by ~~regulation~~ rule provide. The fee ~~so prescribed~~ set by the  
6 Division ~~for a party shall~~ may not exceed the lesser of sixty-five cents ~~(65)~~ (65¢) per page or  
7 sixty-five dollars (\$65.00) per transcript. The Division may by ~~regulation~~ rule provide for the  
8 fee to be waived in ~~such~~ circumstances ~~as it that~~, in its sole ~~discretion~~ discretion, it deems  
9 appropriate but in the case of an appeal in forma pauperis supported by ~~such~~ proofs ~~as are~~  
10 required ~~in~~ by G.S. 1-110, the Division shall waive the fee.

11 The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer,  
12 or other employee assigned to make the decision ~~believes~~ determines the stipulation provides  
13 sufficient information to make a decision, then the appeals referee, hearing officer, or other  
14 employee assigned to make the decision may accept the stipulation and render a decision based  
15 on the stipulation. If the appeals referee, hearing officer, or other employee assigned to make  
16 the decision ~~does not believe~~ determines the stipulation ~~provides~~ does not provide sufficient  
17 information to make a decision, then the appeals referee, hearing officer, or other employee  
18 assigned to make the decision must reject the stipulation. The decision to accept or reject a  
19 stipulation must occur in a recorded hearing.

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

23 (h) Judicial Review. – Any decision of the ~~Division~~ Board of Review, in the absence of  
24 judicial review as herein provided, or in the absence of an interested party filing a request for  
25 reconsideration, ~~shall become~~ becomes final 30 days after the date of notification or mailing  
26 thereof, whichever is earlier. Judicial review ~~shall be~~ is permitted only after a party claiming to  
27 be aggrieved by the decision has exhausted his remedies before the ~~Division~~ Board as provided  
28 in this Chapter and has filed a petition for review in the superior court of the county in which  
29 he resides or has his principal place of business. The petition for review shall explicitly state  
30 what exceptions are taken to the decision or procedure of the ~~Division~~ Board and what relief  
31 the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner shall  
32 serve copies of the petition by personal service or by certified mail, return receipt requested,  
33 upon the ~~Division~~ Board and upon all parties of record to the ~~Division~~ Board proceedings.  
34 ~~Names and addresses of the parties shall be furnished to the petitioner by the Division upon~~  
35 request. The Board shall, upon request, furnish to the petitioner the names and addresses of the  
36 parties. The Division shall be deemed to be Board is a party to any judicial action involving any  
37 of its decisions and may be represented in the judicial action by any qualified attorney who has  
38 been designated by it for that purpose. The Superior Court shall determine any ~~Any~~ questions  
39 regarding the requirements of this subsection concerning the service or filing of a ~~petition shall~~  
40 be determined by the superior court. petition. Any party to the ~~Division~~ Board proceeding may  
41 become a party to the review proceeding by notifying the court within 10 days after receipt of  
42 the copy of the petition. Any person aggrieved may petition to become a party by filing a  
43 motion to intervene as provided in G.S. 1A-1, Rule 24.

44 Within 45 days after receipt of the copy of the petition for review or within such additional  
45 time as the court may allow, the ~~Division~~ Board shall transmit to the reviewing court the  
46 original or a certified copy of the entire record of the proceedings under review. With the  
47 permission of the court the record may be shortened by stipulation of all parties to the review  
48 proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by  
49 the court for such additional cost as is occasioned by the refusal. The court may require or  
50 permit subsequent corrections or additions to the record when deemed desirable.

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

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

18 (k) Rule-making. – ~~The Irrespective of any other provision of this Chapter, the Division~~  
19 may adopt ~~minimum regulations~~ rules necessary to provide for the payment of benefits to  
20 individuals ~~promptly when due as required by section 303(a)(1) of the Social Security Act as~~  
21 ~~amended (42 U.S.C.A., section 503(a)(1))~~ and the administration of this Chapter.

22 "**§ 96-19.81. Seasonal pursuits.**

23 (a) Defined. – A seasonal pursuit is one which, because of seasonal conditions making  
24 it impracticable or impossible to do otherwise, customarily carries on production operations  
25 only within a regularly recurring active period or periods of less than an aggregate of 36 weeks  
26 in a calendar year. ~~No pursuit shall be deemed seasonal unless and until so found by the~~  
27 ~~Division; except that from March 27, 1953, any successor under G.S. 96-8(5)b to a seasonal~~  
28 ~~pursuit shall be deemed seasonal unless such successor shall within 120 days after the~~  
29 ~~acquisition request cancellation of the determination of status of such seasonal pursuit;~~  
30 ~~provided further that this provision shall not be applicable to pending cases nor retroactive in~~  
31 ~~effect.~~

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

38 (c) Notice. – Whenever the Division has determined or redetermined a pursuit to be  
39 seasonal, it must notify such the ~~pursuit shall be notified immediately, immediately and such~~  
40 and the notice ~~shall~~ must contain the beginning and ending dates of the pursuit's active period  
41 or periods. ~~Such pursuits shall~~ The pursuit must display notices of its seasonal determination  
42 conspicuously on its premises in a sufficient number of places to be available for inspection by  
43 its workers. ~~Such~~ The Division must furnish the appropriate notices ~~shall be furnished by the~~  
44 ~~Division notices.~~

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

1 (e) Wages. – All wages paid to a seasonal worker during ~~his~~ the individual's base period  
2 ~~shall~~ must be used in determining ~~his~~ the individual's weekly benefit amount; ~~provided~~  
3 ~~however, that all weekly benefit amounts so determined shall be~~ amount, rounded to the nearest  
4 lower full dollar ~~amount (if not a full dollar amount)~~ amount.

5 (f) Eligibility for Benefits. – A seasonal worker is eligible to receive benefits as  
6 provided in this subsection.

7 (1) A seasonal worker ~~shall be~~ is eligible to receive benefits based on seasonal  
8 wages only for a week of unemployment which occurs, or the greater part of  
9 which occurs within the active period or periods of the seasonal pursuit or  
10 pursuits in which he earned base period wages.

11 (2) A seasonal worker ~~shall be~~ is eligible to receive benefits based on  
12 nonseasonal wages for any week of unemployment which occurs during any  
13 active period or periods of the seasonal pursuit in which ~~he~~ the worker has  
14 earned base period wages provided ~~he~~ the worker has exhausted benefits  
15 based on seasonal wages. ~~Such~~ The worker ~~shall~~ is also be eligible to receive  
16 benefits based on nonseasonal wages for any week of unemployment ~~which~~  
17 ~~that~~ occurs during the inactive period or periods of the seasonal pursuit in  
18 which he earned base period wages irrespective as to whether he has  
19 exhausted benefits based on seasonal wages.

20 (3) The maximum amount of benefits ~~which that~~ a seasonal worker ~~shall be~~ is  
21 eligible to receive based on seasonal wages ~~shall be~~ is an amount, adjusted to  
22 the nearest multiple of one dollar (\$1.00), determined by multiplying the  
23 maximum benefits payable in his benefit year, as provided in G.S. 96-12(d)  
24 of this Chapter, by the percentage obtained by dividing the seasonal wages  
25 in his base period by all of his base period wages.

26 (4) The maximum amount of benefits ~~which that~~ a seasonal worker ~~shall be~~ is  
27 eligible to receive based on nonseasonal wages ~~shall be~~ is an amount,  
28 adjusted to the nearest multiple of one dollar (\$1.00), determined by  
29 multiplying the maximum benefits payable in his benefit year, as provided in  
30 G.S. 96-12(d) of this Chapter, by the percentage obtained by dividing the  
31 nonseasonal wages in his base period by all of his base period wages.

32 (5) In no case ~~shall~~ is a seasonal worker be eligible to receive a total amount of  
33 benefits in a benefit year in excess of the maximum benefits payable for  
34 such benefit year, as provided in G.S. 96-12(d) of this Chapter.

35 (g) Charging of Account. – Benefits paid to a seasonal worker shall be charged in  
36 accordance with this subsection.

37 (1) All benefits paid to a seasonal worker based on seasonal wages shall be  
38 charged, as prescribed in G.S. 96-9(c)(2) of this Chapter, against the account  
39 of ~~his~~ the worker's base period employer or employers who paid ~~him~~ the  
40 worker ~~such~~ the seasonal wages, and for the purpose of this paragraph ~~such~~  
41 ~~the~~ seasonal wages shall be deemed to constitute all of his the worker's base  
42 period wages.

43 (2) All benefits paid to a seasonal worker based on nonseasonal wages shall be  
44 charged, as prescribed in G.S. 96-9(c)(2) of this Chapter, against the account  
45 of ~~his~~ the worker's base period employer or employers who paid ~~him~~ the  
46 worker ~~such~~ the nonseasonal wages, and for the purpose of this paragraph  
47 ~~such~~ the nonseasonal wages ~~shall be deemed to constitute all of his~~ the  
48 worker's base period wages.

49 (h) Calculation of Benefits. – The benefits payable to any otherwise eligible individual  
50 ~~shall be~~ are calculated in accordance with this section for any benefit year ~~which that~~ is  
51 established on or after the beginning date of a seasonal determination applying to a pursuit by

1 which such individual was employed during the base period applicable to such benefit year, as  
2 if such determination had been effective in ~~such~~ the base period.

3 (i) Appeal. – Nothing in this section ~~shall be construed to limit~~ limits the right of any  
4 individual whose claim for benefits is determined in accordance herewith to appeal from ~~such~~  
5 the determination as provided in G.S. 96-15 of this Chapter.

6 (j) Definitions. – The following definitions apply in this section: ~~As used in this section:~~

7 (1) ~~"Pursuit" means an~~ Pursuit. – An employer or branch of an employer.

8 (2) ~~"Branch of an employer" means a~~ Branch of an employer. – A part of an  
9 employer's activities which is carried on or is capable of being carried on as  
10 a separate enterprise.

11 (3) ~~"Production operations" mean all~~ Production operations. – All the activities  
12 of a pursuit which are primarily related to the production of its characteristic  
13 goods or services.

14 (4) ~~"Active period or periods" of a seasonal pursuit means the~~ Active period of a  
15 seasonal pursuit. – The longest regularly recurring period or periods within  
16 which production operations of the pursuit are customarily carried on.

17 (5) ~~"Seasonal wages" mean the~~ Seasonal wages. – The wages earned in a  
18 seasonal pursuit within its active period or periods. The Division may  
19 prescribe by ~~regulation~~ rule the manner in which seasonal wages ~~shall be~~ are  
20 reported.

21 (6) ~~"Seasonal worker" means a~~ Seasonal worker. – A worker at least twenty-five  
22 percent (25%) of whose base period wages are seasonal wages.

23 (7) ~~"Interested party" means any~~ Interested party. – An individual affected by a  
24 seasonal determination.

25 (8) ~~"Inactive period or periods" of a seasonal pursuit means that~~ Inactive period  
26 of a seasonal pursuit. – The part of a calendar year ~~which that~~ is not included  
27 in the active period or periods of such pursuit.

28 (9) ~~"Nonseasonal wages" mean the~~ Nonseasonal wages. – The wages earned in a  
29 seasonal pursuit within the inactive period or periods of such pursuit, or  
30 wages earned at any time in a nonseasonal pursuit.

31 (10) ~~"Wages" mean remuneration for employment.~~

32 **"§ 96-19.82. Protection of witnesses from discharge, demotion, or intimidation.**

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

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

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

43 (d) The statute of limitations for actions under this section ~~shall be~~ is one year pursuant  
44 to G.S. 1-54."

45 **"§ 96-19.83. Protection of witness before the Employment Security Commission.**

46 ~~If any~~ A person who does any one or more of the following is guilty of a Class 1  
47 misdemeanor:

48 (1) ~~shall by threats, menace, or in any other manner intimidate or attempt~~  
49 Intimidates or attempts to intimidate any person who is summoned or ~~acting~~  
50 as who is a witness in any proceeding brought under the Employment  
51 Security Act, or prevent Act.

(2) ~~Prevents or deter, deters, or attempt attempts to prevent or deter deter, any person summoned or acting as such a witness from attendance upon such attending a proceeding, he shall be guilty of a Class 1 misdemeanor.~~ proceeding brought under the Employment Security Act.

**"§ 96-19.84. Protection of rights and benefits; attorney representation; prohibited fees; deductions for child support obligations; fees.**

(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 is~~ 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 is~~ void. No employer ~~shall may~~ 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, the Division may not charge fees of any kind to no an individual claiming benefits in any administrative proceeding under this Chapter ~~shall be charged fees of any kind by the Division or its representative, Chapter,~~ and in any court proceeding under this Chapter each party ~~shall bear~~ bears its own costs and legal fees.

(c) No Assignment of ~~Benefits; Exemptions. Benefits.~~ – Except as provided in subsection (d) of this section, G.S. 96-19.60, any assignment, pledge, or encumbrance of any right to benefits ~~which that~~ are or may become due or payable under this Chapter ~~shall be is~~ void; ~~and such rights void.~~ An individual's to benefits benefits shall be are exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of ~~debts; and benefits received by any individual, debts.~~ An individual's benefits, so long as they are not mingled with other funds of the recipient, ~~shall be are~~ exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to ~~such the~~ individual or ~~his the individual's~~ spouse or dependents during the time when ~~such the~~ individual was unemployed. Any waiver of ~~any an~~ exemption provided for in this subsection ~~shall be is~~ 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.~~

- 1 e. ~~"State or local child support enforcement agency" means any agency~~  
2 ~~of this State or a political subdivision thereof operating pursuant to a~~  
3 ~~plan described in subparagraph b. above.~~
- 4 (2) a. ~~An individual filing a new claim for unemployment compensation~~  
5 ~~shall, at the time of filing such claim, disclose whether the individual~~  
6 ~~owes child support obligations, as defined under subparagraph (1)b.~~  
7 ~~of this subsection. If any such individual discloses that he or she~~  
8 ~~owes child support obligations and is determined by the Division to~~  
9 ~~be eligible for payment of unemployment compensation, the Division~~  
10 ~~shall notify the State or local child support enforcement agency~~  
11 ~~enforcing such obligation that such individual has been determined to~~  
12 ~~be eligible for payment of unemployment compensation.~~
- 13 b. ~~Upon payment by the State or local child support enforcement~~  
14 ~~agency of the processing fee provided for in paragraph (4) of this~~  
15 ~~subsection and beginning with any payment of unemployment~~  
16 ~~compensation that, except for the provisions of this subsection,~~  
17 ~~would be made to the individual during the then current benefit year~~  
18 ~~and more than five working days after the receipt of the processing~~  
19 ~~fee by the Division, the Division shall deduct and withhold from any~~  
20 ~~unemployment compensation otherwise payable to an individual who~~  
21 ~~owes child support obligations:~~
- 22 1. ~~The amount specified by the individual to the Division to be~~  
23 ~~deducted and withheld under this paragraph if neither~~  
24 ~~subparagraph 2. nor subparagraph 3. of this paragraph is~~  
25 ~~applicable; or~~
- 26 2. ~~The amount, if any, determined pursuant to an agreement~~  
27 ~~submitted to the Division under section 454(20)(B)(i) of the~~  
28 ~~Social Security Act by the State or local child support~~  
29 ~~enforcement agency, unless subparagraph 3. of this paragraph~~  
30 ~~is applicable; or~~
- 31 3. ~~Any amount otherwise required to be so deducted and~~  
32 ~~withheld from such unemployment compensation pursuant to~~  
33 ~~properly served legal process, as that term is defined in~~  
34 ~~section 462(e) of the Social Security Act.~~
- 35 e. ~~Any amount deducted and withheld under paragraph b. of this~~  
36 ~~subdivision shall be paid by the Division to the appropriate State or~~  
37 ~~local child support enforcement agency.~~
- 38 d. ~~The Department of Health and Human Services and the Division are~~  
39 ~~hereby authorized to enter into one or more agreements which may~~  
40 ~~provide for the payment to the Division of the processing fees~~  
41 ~~referred to in subparagraph b. and the payment to the Department of~~  
42 ~~Health and Human Services of unemployment compensation benefits~~  
43 ~~withheld, referred to in subparagraph c., on an open account basis.~~  
44 ~~Where such an agreement has been entered into, the processing fee~~  
45 ~~shall be deemed to have been made and received (for the purposes of~~  
46 ~~fixing the date on which the Division will begin withholding~~  
47 ~~unemployment compensation benefits) on the date a written~~  
48 ~~authorization from the Department of Health and Human Services to~~  
49 ~~charge its account is received by the Division. Such an authorization~~  
50 ~~shall apply to all processing fees then or thereafter (within the then~~  
51 ~~current benefit year) chargeable with respect to any individual name~~

1 in the authorization. Any agreement shall provide for the  
2 reimbursement to the Division of any start-up costs and the cost of  
3 providing notice to the Department of Health and Human Services of  
4 any disclosure required by subparagraph a. Such an agreement may  
5 dispense with the notice requirements of subparagraph a. by  
6 providing for a suitable substitute procedure, reasonably calculated to  
7 discover those persons owing child support obligations who are  
8 eligible for unemployment compensation payments.

9 (3) Any amount deducted and withheld under paragraph (2) of this subdivision  
10 shall, for all purposes, be treated as if it were paid to the individual as  
11 unemployment compensation and then paid by such individual to the State  
12 or local child support enforcement agency in satisfaction of the individual's  
13 child support obligations.

14 (4) a. On or before April 1 of 1983 and each calendar year thereafter, the  
15 Division shall set and forward to the Secretary of Health and Human  
16 Services for use in the next fiscal year, a schedule of processing fees  
17 for the withholding and payment of unemployment compensation as  
18 provided for in this subsection, which fees shall reflect its best  
19 estimate of the administrative cost to the Division generated thereby.

20 b. At least 20 days prior to September 25, 1982, the Division shall set  
21 and forward to the Secretary of Health and Human Services an  
22 interim schedule of fees which will be in effect until July 1, 1983.

23 e. The provisions of this subsection apply only if arrangements are  
24 made for reimbursement by the State or local child support agency  
25 for all administrative costs incurred by the Division under this  
26 subsection attributable to child support obligations enforced by the  
27 agency.

28 "Part 9. Enforcement.

29 **"§ 96-19.90. Penalties.**

30 (a) False Representation. – It ~~shall be~~ is unlawful for any person to make a false  
31 statement or representation knowing it to be false or to knowingly fail to disclose a material  
32 fact to obtain or increase any benefit under this Chapter or under an employment security law  
33 of any other state, the federal government, or of a foreign government, either for himself or any  
34 other person. Records, with any necessary authentication thereof, required in the prosecution of  
35 any criminal action brought by another state or foreign government for misrepresentation to  
36 obtain benefits under the law of this State shall be made available to the agency administering  
37 the employment security law of any such state or foreign government for the purpose of such  
38 prosecution. Photostatic copies of all records of agencies of other states or foreign governments  
39 required in the prosecution of any criminal action under this section shall be as competent  
40 evidence as the originals when certified under the seal of such agency, or when there is no seal,  
41 under the hand of the keeper of ~~such~~ the records.

42 (1) A person who violates this subsection ~~shall be found~~ is guilty of a Class I  
43 felony if the value of the benefit wrongfully obtained is more than four  
44 hundred dollars (\$400.00).

45 (2) A person who violates this subsection ~~shall be found~~ is guilty of a Class 1  
46 misdemeanor if the value of the benefit wrongfully obtained is four hundred  
47 dollars (\$400.00) or less.

48 (b) Any employing unit or any officer or agent of an employing unit or any other person  
49 who makes a false statement or representation, knowing it to be false, or who knowingly fails  
50 to disclose a material fact to prevent or reduce the payment of benefits to any individual  
51 entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any

1 contributions or other payment required from an employing unit under this Chapter, or who  
2 willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the  
3 inspection or copying of records as required hereunder, ~~shall be is~~ guilty of a Class 1  
4 misdemeanor; and each such false statement or representation or failure to disclose a material  
5 fact, and each day of such failure or refusal ~~shall constitute~~ constitutes a separate offense.

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

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

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

- 26 (1) Any employing units employing more than 10 employees.
- 27 (2) A contribution of more than two thousand dollars (\$2,000) has not been  
28 paid.
- 29 (3) An experience rating account balance is more than five thousand dollars  
30 (\$5,000) overdrawn.

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

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

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

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

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

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

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

1 (2) Any person who has received any sum as benefits under this Chapter by  
2 reason of the nondisclosure or misrepresentation by him or by another of a  
3 material fact (irrespective of whether such nondisclosure or  
4 misrepresentation was known or fraudulent) or has been paid benefits to  
5 which he was not entitled for any reason (including errors on the part of any  
6 representative of the Division) shall be liable to repay such sum to the  
7 Division as provided in subdivision (3) of this subsection.

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

11 a. If, after due notice, any overpaid claimant shall fail to repay the sums  
12 to which he was not entitled, the amount due may be collected by  
13 civil action in the name of the Division, and the cost of such action  
14 shall be taxed to the claimant. Civil actions brought under this  
15 section to collect overpayments shall be heard by the court at the  
16 earliest possible date and shall be entitled to preference upon the  
17 calendar of the court over all other civil actions except petitions for  
18 judicial review under this Chapter.

19 b. If any overpayment recognized by this subsection shall not be repaid  
20 within 30 days after the claimant has received notice and demand for  
21 same, and after due notice and reasonable opportunity for hearing (if  
22 a hearing on the merits of the claim has not already been had) the  
23 Division, under the hand of the Assistant Secretary, may certify the  
24 same to the clerk of the superior court of the county in which the  
25 claimant resides or has property, and additional copies of said  
26 certificate for each county in which the Division has reason to  
27 believe such claimant has property located; such certificate and/or  
28 copies thereof so forwarded to the clerk of the superior court shall  
29 immediately be docketed and indexed on the cross index of  
30 judgments, and from the date of such docketing shall constitute a  
31 preferred lien upon any property which said claimant may own in  
32 said county, with the same force and effect as a judgment rendered  
33 by the superior court. The Division shall forward a copy of said  
34 certificate to the sheriff or sheriffs of such county or counties, or to a  
35 duly authorized agent of the Division, and when so forwarded and in  
36 the hands of such sheriff or agent of the Division, shall have all the  
37 force and effect of an execution issued to such sheriff or agent of the  
38 Division by the clerk of the superior court upon a judgment of the  
39 superior court duly docketed in said county. The Division is further  
40 authorized and empowered to issue alias copies of said certificate or  
41 execution to the sheriff or sheriffs of such county or counties, or a  
42 duly authorized agent of the Division in all cases in which the sheriff  
43 or duly authorized agent has returned an execution or certificate  
44 unsatisfied; when so issued and in the hands of the sheriff or duly  
45 authorized agent of the Division, such alias shall have all the force  
46 and effect of an alias execution issued to such sheriff or duly  
47 authorized agent of the Division by the clerk of the superior court  
48 upon a judgment of the superior court duly docketed in said county.  
49 Provided, however, that notwithstanding any provision of this  
50 subsection, upon filing one written notice with the Division, the  
51 sheriff of any county shall have the sole and exclusive right to serve

1 all executions and make all collections mentioned in this subsection  
2 and in such case, no agent of the Division shall have the authority to  
3 serve any executions or make any collections therein in such county.  
4 A return of such execution or alias execution, shall be made to the  
5 Division, together with all moneys collected thereunder, and when  
6 such order, execution or alias is referred to the agent of the Division  
7 for service, the said agent of the Division shall be vested with all the  
8 powers of the sheriff to the extent of serving such order, execution or  
9 alias and levying or collecting thereunder. The agent of the Division  
10 to whom such order or execution is referred shall give a bond not to  
11 exceed three thousand dollars (\$3,000) approved by the Division for  
12 the faithful performance of such duties. The liability of said agent  
13 shall be in the same manner and to the same extent as is now  
14 imposed on sheriffs in the service of execution. If any sheriff of this  
15 State or any agent of the Division who is charged with the duty of  
16 serving executions shall willfully fail, refuse or neglect to execute  
17 any order directed to him by the said Division and within the time  
18 provided by law, the official bond of such sheriff or of such agent of  
19 the Division shall be liable for the overpayments and costs due by the  
20 claimant. Additionally, the Division or its designated representatives  
21 in the collection of overpayments shall have the powers enumerated  
22 in G.S. 96-10(b)(2) and (3).

- 23 c. Any person who has been found by the Division to have been  
24 overpaid under subparagraph (1) above shall be liable to have such  
25 sums deducted from future benefits payable to him under this  
26 Chapter.
- 27 d. Any person who has been found by the Division to have been  
28 overpaid under subparagraph (2) above shall be liable to have such  
29 sums deducted from future benefits payable to him under this  
30 Chapter in such amounts as the Division may by ~~regulation~~rule  
31 prescribe but no such benefit payable for any week shall be reduced  
32 by more than fifty percent (50%) of that person's weekly benefit  
33 amount.
- 34 e. To the extent permissible or required under the laws and Constitution  
35 of the United States, the Division is authorized to enter into or  
36 cooperate in arrangements or reciprocal agreements with appropriate  
37 and duly authorized agencies of other states or the United States  
38 Secretary of Labor, or both, whereby: (1) Overpayments of  
39 unemployment benefits as determined under subparagraphs (1) and  
40 (2) above shall be recovered by offset from unemployment benefits  
41 otherwise payable under the unemployment compensation law of  
42 another state, and overpayments of unemployment benefits as  
43 determined under the unemployment compensation law of such other  
44 state shall be recovered by offset from unemployment benefits  
45 otherwise payable under this Chapter; and, (2) Overpayments of  
46 unemployment benefits as determined under applicable federal law,  
47 with respect to benefits or allowances for unemployment provided  
48 under a federal program administered by this State under an  
49 agreement with the United States Secretary of Labor, shall be  
50 recovered by offset from unemployment benefits otherwise payable  
51 under this Chapter or any such federal program, or under the

1 unemployment compensation law of another state or any such federal  
2 unemployment benefit or allowance program administered by such  
3 other state under an agreement with the United States Secretary of  
4 Labor if such other state has in effect a reciprocal agreement with the  
5 United States Secretary of Labor as authorized by Section 303(g)(2)  
6 of the federal Social Security Act, if the United States agrees, as  
7 provided in the reciprocal agreement with this State entered into  
8 under such Section 303(g)(2) of the Social Security Act, that  
9 overpayments of unemployment benefits as determined under  
10 subparagraphs (1) and (2) above, and overpayment as determined  
11 under the unemployment compensation law of another state which  
12 has in effect a reciprocal agreement with the United States Secretary  
13 of Labor as authorized by Section 303(g)(2) of the Social Security  
14 Act, shall be recovered by offset from benefits or allowances for  
15 unemployment otherwise payable under a federal program  
16 administered by this State or such other state under an agreement  
17 with the United States Secretary of Labor.

18 f. The Division may in its discretion decline to collect overpayments to  
19 claimants if the claimant has deceased after the payment was made.  
20 In such a case the Division may remove the debt of the deceased  
21 claimant from its records.

22 (h) **(Effective October 1, 2013) Mandatory Federal Penalty.** – A person who has been  
23 held ineligible for benefits under subsection (e) of this section and who, because of those same  
24 acts or omissions, has received any sum as benefits under this Chapter to which the person is  
25 not entitled shall be assessed a penalty in an amount equal to fifteen percent (15%) of the  
26 amount of the erroneous payment. The penalty amount shall be payable to the Unemployment  
27 Insurance Fund. The penalty applies to an erroneous payment made under any State program  
28 providing for the payment of unemployment compensation as well as an erroneous payment  
29 made under any federal program providing for the payment of unemployment compensation.  
30 The notice of determination or decision advising the person that benefits have been denied or  
31 adjusted pursuant to subsection (e) of this section must include the reason for the finding of an  
32 erroneous payment, the penalty amount assessed under this subsection, and the reason the  
33 penalty has been applied.

34 The penalty amount may be collected in any manner allowed for the recovery of the  
35 erroneous payment, except that the penalty amount may not be recovered through offsets of  
36 future benefits. When a recovery with respect to an erroneous payment is made, any recovery  
37 applies first to the principal of the erroneous payment, then to the federally mandated penalty  
38 amount imposed under this subsection, and finally to any other amounts due."

39 **"§ 96-19.91. Attachment and garnishment of fraudulent overpayment.**

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

44 (1) Made a false statement or misrepresentation.

45 (2) Failed to disclose a material fact.

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

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

5 The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information  
6 that identifies a claimant who owes a fraudulent overpayment that is collectible under this  
7 section and the amount of the overpayment. The Secretary may submit the information on a  
8 quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A  
9 financial institution that receives the information must determine the amount, if any, of  
10 intangible property it holds that belongs to the claimant and must inform the Secretary of its  
11 determination. The Secretary must reimburse a financial institution for its costs in providing the  
12 information, not to exceed the amount payable to the financial institution under G.S. 110-139  
13 for providing information for use in locating a noncustodial parent.

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

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

22 (1) The claimant's name.

23 (2) The claimant's social security number or federal identification number.

24 (3) The amount of fraudulent overpaid benefits the claimant owes.

25 (4) An explanation of the liability of a garnishee for fraudulent overpayment of  
26 unemployment insurance benefits owed by an overpaid claimant.

27 (5) An explanation of the garnishee's responsibility concerning the notice.

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

34 Upon receipt of a written response, the Department must contact the garnishee and schedule  
35 a conference to discuss the response or inform the garnishee of the Department's position  
36 concerning the response. If the Department does not agree with the garnishee on the garnishee's  
37 liability, the Department may proceed to enforce the garnishee's liability for the fraudulent  
38 overpayment of unemployment benefits by civil action.

39 (e) Release. – A notice of garnishment sent to a financial institution is released when  
40 the financial institution complies with the notice. A notice of garnishment sent to all other  
41 garnishees is released when the Department sends the garnishee a notice of release. A notice of  
42 release must state the name and social security number or federal identification number of the  
43 taxpayer to whom the release applies.

44 **"§ 96-19.92. Enforcement of Employment Security Law discontinued upon repeal or**  
45 **invalidation of federal acts; suspension of enforcement provisions contested.**

46 (a) It is the purpose of this Chapter to secure for employers and employees the benefits  
47 of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to  
48 credit on payment of federal taxes, of State contributions, the receipt of federal grants for  
49 administrative purposes, and all other provisions of the said Federal Social Security Act; and it  
50 is intended as a policy of the State that this Chapter and its requirements for contributions by  
51 employers shall continue in force only so long as such employers are required to pay the federal

1 taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title  
2 III and Title IX of the said Federal Social Security Act shall be declared invalid by the United  
3 States Supreme Court, or if such law be repealed by congressional action so that the federal tax  
4 cannot be further levied, from and after the declaration of such invalidity by the United States  
5 Supreme Court, or the repeal of said law by congressional action, as the case may be, no further  
6 levy or collection of contributions shall be made hereunder. The enactment by the Congress of  
7 the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance  
8 Act shall in no way affect the administration of this law except as herein expressly provided.

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

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

31 (b) The Division of Employment Security may, upon receiving notification from the  
32 U.S. Department of Labor that any provision of this Chapter is out of conformity with the  
33 requirements of the federal law or of the U.S. Department of Labor, suspend the enforcement of  
34 the contested section or provision until the North Carolina Legislature next has an opportunity  
35 to make changes in the North Carolina law. The Division shall, in order to implement the above  
36 suspension:

- 37 (1) Notify the Governor's office and provide that office with a copy of the  
38 determination or notification of the U.S. Department of Labor;
- 39 (2) Advise the Governor's office as to whether the contested portion or provision  
40 of the law would, if not enforced, so seriously hamper the operations of the  
41 agency as to make it advisable that a special session of the legislature be  
42 called;
- 43 (3) Take all reasonable steps available to obtain a reprieve from the  
44 implementation of any federal conformity failure sanctions until the State  
45 legislature has been afforded an opportunity to consider the existing  
46 conflict."

47 **SECTION 5.(b)** G.S. 96-19.30 and G.S. 96-19.31, as enacted by subsection (a) of  
48 this section, become effective January 1, 2014, and apply to taxable years beginning on or after  
49 that date. The remainder of subsection (a) of this section becomes effective July 1, 2013, and  
50 applies to claims for benefits filed on or after that date. The remainder of this section is  
51 effective when it becomes law.

1           **SECTION 6.(a)** G.S. 96-4 reads as rewritten:

2   "**§ 96-4. Administration; powers and duties of the Assistant Secretary; Board of Review.**

3       ...

4       (b)   Board of Review. – The Governor shall appoint a three-person Board of Review to  
5 determine appeals policies and procedures and to hear appeals arising from the decisions and  
6 determinations of the ~~Employment Security Section and the Employment Insurance~~  
7 ~~Section~~Division of Employment Security. The Board of Review shall be comprised of one  
8 member representing employers, one member representing employees, and one member  
9 representing the general public. Members of the Board of Review are subject to confirmation  
10 by the General Assembly and shall serve four-year terms. The member appointed to represent  
11 the general public shall serve as chair of the Board of Review and shall be a licensed attorney.  
12 The annual salaries of the Board of Review shall be set by the General Assembly in the current  
13 Operations Appropriations Act. The Board of Review shall exercise its decision-making  
14 processes independent of the Governor, the General Assembly, the Department of Commerce,  
15 and the Division of Employment Security.

16       ...

17       (i)   Records and Reports. –

18           (1)   Each employing unit shall keep true and accurate employment records,  
19 containing such information as the Division may prescribe. The records shall  
20 be open to inspection and be subject to being copied by the Division or its  
21 authorized representatives at any reasonable time and as often as may be  
22 necessary. Any employing unit doing business in North Carolina shall make  
23 available in this State to the Division, such information with respect to  
24 persons, firms, or other employing units performing services for it which the  
25 Secretary deems necessary in connection with the administration of this  
26 Chapter. The Division may require from any employing unit any sworn or  
27 unsworn reports, with respect to persons employed by it, which the Secretary  
28 deems necessary for the effective administration of this ~~Chapter~~Chapter,  
29 including the employer's quarterly tax and wage report containing the name,  
30 social security number, and gross wages of persons employed during that  
31 quarter.

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

47       ...

48       (q)   The ~~Division~~Board of Review after due notice shall have the right and power to  
49 hold and conduct hearings for the purpose of determining the rights, status and liabilities of any  
50 "employing unit" or "employer" as said terms are defined by ~~G.S. 96-8(4) and 96-8(5) and~~  
51 ~~subdivisions thereunder.~~ in Article 2A of this Chapter. The ~~Division~~Board of Review shall

1 have the power and authority to determine any and all questions and issues of fact or questions  
2 of law that may arise under the Employment Security Law that may affect the rights, liabilities  
3 and status of any employing unit or employer as heretofore defined by the Employment  
4 Security Law including the right to determine the amount of contributions, if any, which may  
5 be due the Division of Employment Security by any employer. Hearings may be before the  
6 Board of Review ~~or the Division~~ and shall be held in the central office of the ~~Division~~ Board of  
7 Review or at any other designated place within the State. They shall be open to the public and  
8 shall consist of a review of the evidence taken by a hearing officer designated by the Board of  
9 Review and a determination of the law applicable to that evidence. The ~~Division~~ Board of  
10 Review shall provide for the taking of evidence by a hearing ~~officer~~ officer employed in the  
11 capacity of an attorney by the Department of Commerce. Such hearing officer shall have the  
12 same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is  
13 possessed by the ~~Division~~ Board and such hearings shall be recorded, and he shall transmit all  
14 testimony and records of such hearings to the Board of Review ~~or Division~~ for its  
15 determination. All such hearings conducted by such hearing officer shall be scheduled and held  
16 in any county in this State in which the employing unit or employer either resides, maintains a  
17 place of business, or conducts business; however, the Board of Review ~~or Division~~ may require  
18 additional testimony at any hearings held by it at its office. From all decisions or  
19 determinations made by the ~~Assistant Secretary or the~~ Board of Review, any party affected  
20 thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed to  
21 appeal, the party shall within 10 days after notice of such decision or determination, file with  
22 the Board of Review exceptions to the decision or the determination, which exceptions will  
23 state the grounds of objection to the decision or determination. If any one of the exceptions  
24 shall be overruled then the party may appeal from the order overruling the exceptions, and  
25 shall, within 10 days after the decision overruling the exceptions, give notice of ~~his~~ its appeal.  
26 When an exception is made to the facts as found by the Board of Review, the appeal shall be to  
27 the superior court in term time but the decision or determination of the ~~Division~~ Board of  
28 Review upon such review in the superior court shall be conclusive and binding as to all  
29 questions of fact supported by any competent evidence. When an exception is made to any  
30 rulings of law, as determined by the Board of Review, the appeal shall be to the judge of the  
31 superior court at chambers. The party appealing shall, within 10 days after the notice of appeal  
32 has been served, file with the Board of Review exceptions to the decision or determination  
33 overruling the exception which statement shall assign the errors complained of and the grounds  
34 of the appeal. Upon the filing of such statement the Board of Review shall, within 30 days,  
35 transmit all the papers and evidence considered by it, together with the assignments of errors  
36 filed by the appellant to a judge of the superior court holding court or residing in some district  
37 in which such appellant either resides, maintains a place of business or conducts business, or,  
38 unless the appellant objects after being given reasonable opportunity to object, to a judge of the  
39 Superior Court of Wake County: Provided, however, the 30-day period specified herein may be  
40 extended by agreement of parties.

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

1 court under the same rules and regulations as are prescribed by law for appeals, except that if  
2 an appeal shall be taken on behalf of the Department of Commerce, it shall not be required to  
3 give any undertaking or make any deposit to secure the cost of such appeal and such court may  
4 advance the cause on its docket so as to give the same a speedy hearing.

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

35 ...."

36 **SECTION 6.(b)** This section is effective when it becomes law.

37 **SECTION 7.(a)** Committee Established. – There is created the Joint Legislative  
38 Oversight Committee on Unemployment Insurance. The Committee consists of four members  
39 of the House of Representatives appointed by the Speaker of the House of Representatives and  
40 four members of the Senate appointed by the President Pro Tempore of the Senate.

41 The Speaker of the House of Representatives shall designate one Representative as  
42 cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair.  
43 Vacancies on the Committee shall be filled by the same appointing authority making the initial  
44 appointment.

45 The Committee, while in the discharge of its official duties, may exercise all powers  
46 provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may  
47 meet at any time upon the joint call of the cochairs. The Committee may meet in the Legislative  
48 Building or the Legislative Office Building. The Committee may contract for professional,  
49 clerical, or consultant services as provided by G.S. 120-32.02.

50 The Legislative Services Commission, through the Legislative Services Officer,  
51 shall assign professional staff to assist the Committee in its work. The House of

1 Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to  
2 the Committee, and the expenses relating to the clerical employees shall be borne by the  
3 Committee. Members of the Committee shall receive subsistence and travel expenses at the  
4 rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

5 **SECTION 7.(b) Duties.** – The Committee is directed to study and review all  
6 unemployment insurance matters, workforce development programs, and reemployment  
7 assistance efforts of the State. The following duties and powers, which are enumerated by way  
8 of illustration, shall be liberally construed to provide maximum review by the Committee of  
9 these matters:

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

25 **SECTION 7.(c) Report.** – The Committee may report its findings and  
26 recommendations to any regular session of the General Assembly. A report to the General  
27 Assembly may contain any legislation needed to implement a recommendation of the  
28 Committee.

29 **SECTION 7.(d)** This section is effective when it becomes law and expires July 1,  
30 2023.

31 **SECTION 8.** Except as otherwise provided, this act is effective when it becomes  
32 law.