

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 828*
Finance Committee Substitute Adopted 6/6/12
Third Edition Engrossed 6/7/12
PROPOSED HOUSE COMMITTEE SUBSTITUTE S828-PCS15244-RB-81

Short Title: Unemployment Insurance Changes.

(Public)

Sponsors:

Referred to:

May 21, 2012

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

4
5 **PART I. CHANGE THE LAW TO CONTINUE THE THREE-YEAR LOOKBACK**
6 **TRIGGER FOR EXTENDED BENEFITS**

7 **SECTION 1.(a)** The General Assembly finds that the Governor's Executive Order
8 No. 93, entitled "Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of
9 North Carolina's Long-Term Unemployed," was the purported basis for action by the then
10 Employment Security Commission to provide for the extension of unemployment benefits to
11 thousands of North Carolinians. The extension of unemployment benefits was grounded upon
12 amendments to section 203 of the Federal-State Extended Unemployment Compensation Act of
13 1970 (the "1970 Act"), as amended by section 502(b) of the Tax Relief, Unemployment
14 Insurance Reauthorization and Job Creation Act of 2010 (the "Tax Relief Act of 2010").

15 **SECTION 1.(b)** The General Assembly finds that the Governor's Executive Order
16 No. 113, entitled "Further Extend Unemployment Benefits to Protect the Safety, Health, and
17 Welfare of North Carolina's Long-Term Unemployed," was the purported basis for action by
18 the then Employment Security Commission to provide for the extension of unemployment
19 benefits to thousands of North Carolinians nearing the end of a two-month federal extension of
20 unemployment benefits under section 201 of the Temporary Payroll Tax Cut Continuation Act
21 of 2011. That extension, authorized through February 29, 2012, was grounded upon
22 amendments to section 203 of the 1970 Act, as amended by section 502(b) of the Tax Relief
23 Act of 2010.

24 **SECTION 1.(c)** The General Assembly finds that section 502(b) of the Tax Relief
25 Act of 2010 specifies that the extension of benefits is to be made only as "the State may by law
26 provide." Section 205(f) of the underlying 1970 Act defines "State law" as the "unemployment
27 compensation law of the State, approved by the [U.S. Secretary of Labor]." In North Carolina,
28 that law is Chapter 96 of the General Statutes, the "Employment Security Law." Nothing in
29 Chapter 96 of the General Statutes, then or now, authorizes the Governor to extend
30 unemployment benefits by executive order, nor does Executive Order No. 93 or Executive
31 Order No. 113, or any other such order, constitute a "State law" within the meaning of the 1970
32 Act or the North Carolina Constitution. Section 1 of Article II of the North Carolina



* S 8 2 8 - P C S 1 5 2 4 4 - R B - 8 1 *

1 Constitution provides that "the legislative power of the State shall be vested in the General
2 Assembly." Further, Section 6 of Article I of the North Carolina Constitution provides that the
3 legislative and executive powers are "separate and distinct."

4 **SECTION 1.(d)** The General Assembly finds that the people of this State entrusted
5 the creation of laws to the General Assembly, not to the executive branch, and that Executive
6 Order No. 93 and Executive Order No. 113 were issued and acted upon by the executive branch
7 in a manner contrary to the rule of law.

8 **SECTION 1.(e)** Further, the General Assembly finds that it enacted Section 6.16 of
9 Session Law 2011-145 and, in so doing, validated the effects of the Governor's Executive Order
10 No. 113 with the stated intent to allow extended benefits to be paid under the Tax Relief Act of
11 2010 so long as payment of the extended benefits did not hinder the State's ability to reduce its
12 debt owed to the federal government for unemployment benefits.

13 **SECTION 1.(f)** It is deemed, therefore, to be in the best interest of the people of
14 this State that the General Assembly now ratify and hereby validate the effects of the
15 Governor's Executive Order No. 113.

16 **SECTION 1.(g)** To maintain the rule of law with respect to State and federal
17 relations pertaining to employment security laws in North Carolina, any executive order issued
18 by the Governor that purports to extend unemployment insurance benefits, whether those
19 benefits will be paid from federal or State funds, is void ab initio, unless the executive order is
20 issued upon authority that is conferred expressly by an act enacted by the General Assembly or
21 granted specifically to the Governor by the Congress of the United States.

22 **SECTION 1.(h)** Section 6.16(d) of S.L. 2011-145 reads as rewritten:

23 "**SECTION 6.16.(d)** This section becomes effective April 16, 2011, and expires ~~January 1,~~
24 ~~2012.~~January 1, 2013."

25 **SECTION 1.(i)** G.S. 96-12.01(a1)(4)c.3. reads as rewritten:

26 "3. This section applies as provided under the Tax Relief,
27 Unemployment Insurance Reauthorization, and Job Creation
28 Act of 2010 (P.L. 111-312) as it existed on December 17,
29 2010, and is applicable to compensation for weeks of
30 unemployment beginning after December 17, 2010, and
31 ending on or before ~~December 31, 2011,~~December 31, 2012,
32 provided that:

- 33 I. The average rate of (i) insured unemployment, not
34 seasonally adjusted, equaled or exceeded one hundred
35 twenty percent (120%) of the average of such rates for
36 the corresponding 13-week period ending in all of the
37 preceding three calendar years and equaled or
38 exceeded five percent (5%) or (ii) total
39 unemployment, seasonally adjusted, as determined by
40 the United States Secretary of Labor, for the period
41 consisting of the most recent three months for which
42 data for all states are published before the close of the
43 week equals or exceeds six and one-half percent
44 (6.5%); and
45 II. The average rate of total unemployment in this State,
46 seasonally adjusted, as determined by the United
47 States Secretary of Labor, for the three-month period
48 referred to in this subsection, equals or exceeds one
49 hundred ten percent (110%) of the average for any of
50 the corresponding three-month periods ending in the
51 three preceding calendar years."

1 **SECTION 1.(j)** G.S. 96-12.01(a1)(4)e.3. reads as rewritten:

2 "3. This subdivision applies as provided under the Tax Relief,
3 Unemployment Insurance Reauthorization, and Job Creation
4 Act of 2010 (P.L. 111-312) as it existed on December 17,
5 2010, and is applicable to compensation for weeks of
6 unemployment beginning after December 17, 2010, and
7 ending on or before ~~December 31, 2011~~, December 31, 2012,
8 provided that:

- 9 I. The average rate of total unemployment, seasonally
10 adjusted, as determined by the United States Secretary
11 of Labor, for the period consisting of the most recent
12 three months for which data for all states are
13 published before the close of the week equals or
14 exceeds eight percent (8%); and
15 II. The average rate of total unemployment in this State,
16 seasonally adjusted, as determined by the United
17 States Secretary of Labor, for the three-month period
18 referred to in this subdivision equals or exceeds one
19 hundred ten percent (110%) of the average for any of
20 the corresponding three-month periods ending in the
21 three preceding calendar years."

22 **SECTION 1.(k)** This section is effective when it becomes law and applies
23 retroactively to January 1, 2012.

24
25 **PART II. RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401**

26 **SECTION 2.(a)** The Current Operations Appropriations Act for the 2012-2013
27 fiscal year shall provide for the annual salaries of the Board of Review, as provided in
28 G.S. 96-4(b).

29 **SECTION 2.(b)** G.S. 96-14(2) reads as rewritten:

30 **"§ 96-14. Disqualification for benefits.**

31 An individual shall be disqualified for benefits:

- 32 ...
- 33 (2) For the duration of the individual's unemployment beginning with the first
34 day of the first week after the disqualifying act occurs with respect to which
35 week an individual files a claim for benefits if it is determined by the
36 Division that such individual is, at the time such claim is filed, unemployed
37 because he or she was discharged for misconduct connected with the work.
38 Misconduct connected with the work is defined as intentional acts or
39 omissions evincing disregard of an employer's interest or standards of
40 behavior which the employer has a right to expect or has explained orally or
41 in writing to an employee or evincing carelessness or negligence of such
42 degree as to manifest equal disregard. Receipt by the employee of no fewer
43 than three written reprimands from the employer in the 12 months that
44 immediately precedes the employee's termination is prima facie evidence of
45 misconduct connected with the work. Examples of misconduct connected
46 with the work include the following:

47 ~~"Discharge for misconduct with the work" as used in this section is~~
48 ~~defined to include but not be limited to~~

- 49 a. ~~separation~~ Separation initiated by an employer for violating the
50 employer's written alcohol or illegal drug ~~policy; reporting policy.~~

- 1 b. Reporting to work significantly impaired by alcohol or illegal ~~drugs;~~
2 ~~consuming drugs.~~
- 3 c. Consuming alcohol or illegal drugs on employer's ~~premises;~~
4 ~~conviction premises.~~
- 5 d. Conviction by a court of competent jurisdiction for manufacturing,
6 selling, or distribution of a controlled substance punishable under
7 G.S. 90-95(a)(1) or G.S. 90-95(a)(2) ~~while in the employ of said~~
8 ~~employer; being~~ if the offense is related to or connected with an
9 employee's work for an employer or is in violation of a reasonable
10 work rule or policy.
- 11 e. Being terminated or suspended from employment after arrest or
12 conviction for an offense involving violence, sex crimes, or illegal
13 ~~drugs; any drugs~~ if the offense is related to or connected with an
14 employee's work for an employer or is in violation of a reasonable
15 work rule or policy.
- 16 f. Any physical violence whatsoever related to an employee's work for
17 an employer, including, but not limited to, physical violence directed
18 at supervisors, subordinates, coworkers, vendors, customers, or the
19 general ~~public; inappropriate~~ public.
- 20 g. Inappropriate comments or behavior towards supervisors,
21 subordinates, coworkers, vendors, customers, or to the general public
22 relating to any federally protected characteristic which creates a
23 hostile work ~~environment; theft~~ environment.
- 24 h. Theft in connection with the ~~employment; forging~~ employment.
- 25 i. Forging or falsifying any document or data related to employment,
26 including a previously submitted application for ~~employment;~~
27 ~~violation employment.~~
- 28 j. Violation of an employer's written absenteeism ~~policy;~~
29 ~~refusing~~ policy.
- 30 k. Refusing to perform reasonably assigned work ~~tasks; tasks, and the~~
31 ~~failure to adequately perform any other employment duties as~~
32 ~~evidenced by no fewer than three written reprimands received in the~~
33 ~~12 months immediately preceding the employee's termination. This~~

34 The phrase "discharge for misconduct connected with the work" does not
35 include the discharge or an employer-initiated separation of a severely
36 disabled veteran, as defined in G.S. 96-8, for any act or omission of the
37 veteran that the Division determines are attributed to a disability incurred or
38 aggravated in the line of duty during active military service, or to the
39 veteran's absence from work to obtain care and treatment of a disability
40 incurred or aggravated in the line of duty during active military service."

41 **SECTION 2.(c)** G.S. 96-15(b)(2) reads as rewritten:

42 "(2) Adjudication. – When a protest is made by the claimant to the initial or
43 monetary determination, or a question or issue is raised or presented as to the
44 eligibility of a claimant under G.S. 96-13, or whether any disqualification
45 should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant
46 to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator
47 may consider any matter, document or statement deemed to be pertinent to
48 the issues, including telephone conversations, and after such consideration
49 shall render a conclusion as to the claimant's benefit entitlements. The
50 adjudicator shall notify the claimant and all other interested parties of the
51 conclusion reached. The conclusion of the adjudicator shall be deemed the

1 final decision of the Division unless within 30 days after the date of
2 notification or mailing of the conclusion, whichever is earlier, a written
3 appeal is filed pursuant to rules adopted by the Division. The Division shall
4 be deemed an interested party for such purposes and may remove to itself or
5 transfer to an appeals referee the proceedings involving any claim pending
6 before an adjudicator.

7 Provided, any interested employer shall be allowed ~~30~~10 days from the
8 ~~earlier of mailing or~~ delivery of the notice of the filing of a claim against the
9 employer's account to protest the claim and have the claim referred to an
10 adjudicator for a decision on the question or issue raised. A copy of the
11 notice of the filing shall be sent contemporaneously to the employer by
12 telefacsimile transmission if a fax number is on file. Provided further, no
13 question or issue may be raised or presented by the Division as to the
14 eligibility of a claimant under G.S. 96-13, or whether any disqualification
15 should be imposed under G.S. 96-14, after 45 days from the first day of the
16 first week after the question or issue occurs with respect to which week an
17 individual filed a claim for benefits. None of the provisions of this
18 subsection shall have the force and effect nor shall the same be construed or
19 interested as repealing any other provisions of G.S. 96-18.

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

24 **SECTION 2.(d)** G.S. 96-15(f) reads as rewritten:

25 "(f) Procedure. – The manner in which disputed claims shall be presented, the reports
26 thereon required from the claimant and from employers, and the conduct of hearings and
27 appeals shall be in accordance with rules adopted by the Division for determining the rights of
28 the parties, whether or not such rules conform to common-law or statutory rules of evidence
29 and other technical rules of procedure. ~~All~~

30 All testimony at any hearing before an appeals referee upon a disputed claim shall be
31 recorded unless the the parties have waived the evidentiary hearing and entered into a
32 stipulation resolving the issues pending before the appeals referee, hearing officer, or other
33 employee assigned to make the decision, recording is waived by all interested parties. If the
34 testimony is recorded, it but need not be transcribed unless the disputed claim is further
35 appealed and, one or more of the parties objects, under such rules as the Division may adopt, to
36 being provided a copy of the tape recording of the hearing. Any other provisions of this
37 Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such
38 reasonable fee for the transcript as the Division may by regulation provide. The fee so
39 prescribed by the Division for a party shall not exceed the lesser of sixty-five cents (65¢) per
40 page or sixty-five dollars (\$65.00) per transcript. The Division may by regulation provide for
41 the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in
42 the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110,
43 the Division shall waive the fee.

44 The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer,
45 or other employee assigned to make the decision believes the stipulation provides sufficient
46 information to make a decision, then the appeals referee, hearing officer, or other employee
47 assigned to make the decision may accept the stipulation and render a decision based on the
48 stipulation. If the appeals referee, hearing officer, or other employee assigned to make the
49 decision does not believe the stipulation provides sufficient information to make a decision,
50 then the appeals referee, hearing officer, or other employee assigned to make the decision must

1 reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded
2 hearing."

3 **SECTION 2.(e)** Subsections (b) through (d) of this section become effective
4 November 1, 2012. The remainder of this section is effective when it becomes law.

5
6 **PART III. COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE**
7 **EXTENSION ACT OF 2011**

8 **SECTION 3.(a)** G.S. 110-129.2(c) reads as rewritten:

9 "(c) Report Contents. – Each report required by this section shall contain the name,
10 address, ~~and~~ social security number of the newly hired employee, the date services for
11 remuneration were first performed by the newly hired employee, and the name and address of
12 the employer and the employer's identifying number assigned under section 6109 of the
13 Internal Revenue Code of 1986 and the employer's State employer identification number.
14 Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form,
15 and may be transmitted magnetically, electronically, or by first-class mail."

16 **SECTION 3.(b)** G.S. 110-129.2(j) is amended by adding a new subdivision to
17 read:

18 "(j) Definitions. – As used in this section, unless the context clearly requires otherwise,
19 the term:

20 ...
21 (5) "Newly hired employee" means (i) an employee who has not previously
22 been employed by the employer and (ii) an employee who was previously
23 employed by the employer but has been separated from such prior
24 employment for at least 60 consecutive days."

25 **SECTION 3.(c)** G.S. 96-9(c)(2) is amended by adding a new sub-subdivision to
26 read:

27 "(2) Charging of benefit payments. –

28 ...

29 f. The Division shall charge benefits to an employer's account when it
30 determines that an overpayment has been made to a claimant and it
31 determines that both of the following conditions apply:

- 32 1. The overpayment occurred because the employer failed to
33 respond timely or adequately to a written request of the
34 Division for information relating to an unemployment
35 compensation claim.
- 36 2. The employer exhibits a pattern of failure to respond timely
37 or adequately by failing to respond to written requests from
38 the Division for information relating to an unemployment
39 compensation claim on two or more occasions. If an
40 employer uses a third-party agent to respond on its behalf to
41 the Division, then the actions of the agent must be considered
42 when determining a pattern of failure to respond timely or
43 adequately. A pattern is established based on the agent's
44 behavior overall and not only with respect to its behavior
45 related to the employer.

46 For purposes of this sub-subdivision, written notification may
47 include a request sent electronically. A response is considered
48 untimely if it fails to be made within the time allowed under
49 G.S. 96-15(b)(2). A response is considered inadequate if it fails to
50 provide sufficient facts to enable the Division to make a correct
51 determination of benefits. However, a response may not be

1 considered inadequate if the Division fails to request the necessary
2 information.

3 The prohibition on the noncharging of an employer's account
4 under this sub-subdivision applies to each week of unemployment
5 compensation that is an overpayment until the Division makes a
6 determination that the claimant is no longer eligible for the overpaid
7 amount and stops making the overpayment. If the claim is a
8 combined-wage claim, the determination of noncharging for the
9 combined-wage claim shall be made by the paying state. If the
10 response from the employer does not meet the criteria established by
11 the paying state for an adequate or timely response, the paying state
12 must promptly notify the transferring state of its determination and
13 the employer must be appropriately charged. The Division may
14 waive the prohibition for good cause."

15 **SECTION 3.(d)** G.S. 96-18 is amended by adding a new subsection to read:

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

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

32 **SECTION 3.(e)** G.S. 96-6(a) reads as rewritten:

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

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

1 (8) Any federally mandated penalty amount assessed under G.S. 96-18(h).

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

3 **SECTION 3.(f)** Subsection (c) of this section becomes effective October 1, 2013,
4 and applies to an overpayment established on or after that date. Subsections (d) and (e) of this
5 section become effective October 1, 2013, and apply to an erroneous payment determined
6 under G.S. 96-18(e) to be a fraudulent overpayment on or after that date. The remainder of this
7 section becomes effective July 1, 2012.

8
9 **PART IV. ENHANCE UNEMPLOYMENT COMPENSATION FRAUD DETECTION**
10 **AND RECOVERY, AS RECOMMENDED BY THE HOUSE UNEMPLOYMENT**
11 **FRAUD TASK FORCE**

12 **SECTION 4.(a)** G.S. 96-18(a) reads as rewritten:

13 "(a) ~~Any~~ It shall be unlawful for any person who makes to make a false statement or
14 representation knowing it to be false or to knowingly fails fail to disclose a material fact to
15 obtain or increase any benefit under this Chapter or under an employment security law of any
16 other state, the federal government, or of a foreign government, either for himself or any other
17 ~~person, shall be guilty of a Class 1 misdemeanor, and each such false statement or~~
18 ~~representation or failure to disclose a material fact shall constitute a separate offense.~~person.
19 Records, with any necessary authentication thereof, required in the prosecution of any criminal
20 action brought by another state or foreign government for misrepresentation to obtain benefits
21 under the law of this State shall be made available to the agency administering the employment
22 security law of any such state or foreign government for the purpose of such prosecution.
23 Photostatic copies of all records of agencies of other states or foreign governments required in
24 the prosecution of any criminal action under this section shall be as competent evidence as the
25 originals when certified under the seal of such agency, or when there is no seal, under the hand
26 of the keeper of such records.

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

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

33 **SECTION 4.(b)** G.S. 96-18(g)(1) is repealed.

34 **SECTION 4.(c)** G.S. 96-18(g)(2) reads as rewritten:

35 "(2) Any person who has received any sum as benefits under this Chapter by
36 reason of the nondisclosure or misrepresentation by him or by another of a
37 material fact (irrespective of whether such nondisclosure or
38 misrepresentation was known or fraudulent) or has been paid benefits to
39 which he was not entitled for any reason (including errors on the part of any
40 representative of the Division) ~~other than subparagraph (1) above~~ shall be
41 liable to repay such sum to the Division as provided in ~~subparagraph (3)~~
42 ~~below, provided no such recovery or recoupment of such sum may be~~
43 ~~initiated after three years from the last day of the year in which the~~
44 ~~overpayment occurred.~~subdivision (3) of this subsection."

45 **SECTION 4.(d)** The Department of the Treasury, Financial Management Service,
46 is the federal government's central debt collection agency. It develops and maintains a
47 centralized offset program known as the Treasury Offset Program (TOP), by which payments
48 are offset to collect delinquent debts owed to federal agencies and states. State Unemployment
49 Compensation debts are now eligible for referral to the Program, pursuant to Public Law
50 110-32 and Public Law 111-291.

1 It is the desire of the General Assembly for the State to participate in the
2 Unemployment Insurance Compensation Debt Program on or before January 1, 2013. The
3 Division of Employment Security is required to report to the House Unemployment Fraud Task
4 Force by September 1, 2012, November 1, 2012, and January 1, 2013, on the implementation
5 of the TOP. The report should contain, at a minimum, the following:

- 6 (1) An implementation time line, including a go-live date and status update on
7 where the Division is in the process.
- 8 (2) A detailed list of implementation requirements. For each requirement, the
9 Division is to provide any barriers and proposed solutions to each barrier.
- 10 (3) An itemized accounting of the cost to implement TOP, including the source
11 of funds used. Recurring and nonrecurring costs shall be broken out
12 accordingly.
- 13 (4) For the September 1 report, the Division is to provide an estimate of how
14 much it anticipates recovering annually through TOP. The report should
15 include the methodology used to arrive at this estimate.

16 **SECTION 4.(e)** Subsection (a) of this section becomes effective December 1,
17 2012, and applies to offenses committed on or after that date. Subsections (b) and (c) of this
18 section become effective October 1, 2012, and apply to an overpayment established on or after
19 that date. The remainder of this section is effective when it becomes law.

20 21 **PART V. TECHNICAL CHANGES REQUESTED BY THE DIVISION OF** 22 **EMPLOYMENT SECURITY**

23 **SECTION 5.(a)** The title of Article 4 of Chapter 96 of the General Statutes reads
24 as rewritten:

25 "Article 4.

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

28 **SECTION 5.(b)** G.S. 96-31 reads as rewritten:

29 **"§ 96-31. Definitions.**

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

- 31 (1) "CFS" means the common follow-up information management system
32 developed by ~~DES~~ the Labor and Economic Analysis Division under this
33 Article.
- 34 (2) ~~"DES" means the Division of Employment Security.~~
- 35 (3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).
- 36 (4) "State job training, education, and placement program" or "State-funded
37 program" means a program operated by a State or local government agency
38 or entity and supported in whole or in part by State or federal funds, that
39 provides job training and education or job placement services to program
40 participants. The term does not include on-the-job training provided to
41 current employees of the agency or entity for the purposes of professional
42 development."

43 **SECTION 5.(c)** G.S. 96-32 reads as rewritten:

44 **"§ 96-32. Common follow-up information management system created.**

45 (a) The ~~DES~~ Labor and Economic Analysis Division shall develop, implement, and
46 maintain a common follow-up information management system for tracking the employment
47 status of current and former participants in State job training, education, and placement
48 programs. The system shall provide for the automated collection, organization, dissemination,
49 and analysis of data obtained from State-funded programs that provide job training and
50 education and job placement services to program participants. In developing the system, the
51 ~~DES~~ Division shall ensure that data and information collected from State agencies is

1 confidential, not open for general public inspection, and maintained and disseminated in a
2 manner that protects the identity of individual persons from general public disclosure.

3 (b) ~~The DES-Labor and Economic Analysis Division~~ shall adopt procedures and
4 guidelines for the development and implementation of the CFS authorized under this section.

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

10 **SECTION 5.(d)** G.S. 96-33 reads as rewritten:

11 "**§ 96-33. State agencies required to provide information and data.**

12 (a) Every State agency and local government agency or entity that receives State or
13 federal funds for the direct or indirect support of State job training, education, and placement
14 programs shall provide to the ~~DES-Labor and Economic Analysis Division~~ all data and
15 information available to or within the agency or entity's possession requested by the ~~DES~~
16 Division for input into the common follow-up information management system authorized
17 under this ~~Article~~-Article and for such other official functions as are performed by the Division.
18 The Division of Employment Security shall provide all information in its possession and
19 control requested by the Division in order for the Division to accomplish the purpose set forth
20 in this Article and such other official functions performed by it.

21 (b) Each agency or entity required to report information and data to the ~~DES-Labor and~~
22 Economic Analysis Division under this Article shall maintain true and accurate records of the
23 information and data requested by the ~~DES-Division~~. The records shall be open to ~~DES-the~~
24 Division for inspection and copying at reasonable times and as often as necessary. Each agency
25 or entity shall further provide, upon request by ~~DES, the Division~~, sworn or unsworn reports
26 with respect to persons employed or trained by the agency or entity, as deemed necessary by
27 the ~~DES-Division~~ to carry out the purposes of this Article. Information obtained by the ~~DES~~
28 Division from the agency or entity-agency, entity, or the Division of Employment Security shall
29 be held by DES-the Division as confidential-confidential, subject to the State and federal laws
30 governing treatment of such information, and shall not be published or open to public
31 inspection other than in a manner that protects the identity of individual persons and
32 employers."

33 **SECTION 5.(e)** G.S. 96-35 reads as rewritten:

34 "**§ 96-35. Reports on common follow-up system activities.**

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

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

43 **SECTION 5.(f)** This section is effective when it becomes law.

44 **PART VI. NC FACTS PROGRAM**

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

46 "(x) Confidentiality of Records, Reports, and Information Obtained from Claimants,
47 Employers, and Units of Government. Disclosure and redisclosure of confidential information
48 shall be consistent with 20 C.F.R. Part 603 and any written guidance promulgated and issued
49 by the U.S. Department of Labor consistent with this regulation and any successor regulation.
50 To the extent a disclosure or redisclosure of confidential information is permitted or required
51

1 by this federal regulation, the Department's authority to disclose or redisclose the information
2 includes the following:

3 (1) Confidentiality of Information Contained in Records and Reports. – (i)
4 Except as hereinafter otherwise provided, it shall be unlawful for any person
5 to obtain, disclose, or use, or to authorize or permit the use of any
6 information which is obtained from any employing unit, individual, or unit
7 of government pursuant to the administration of this Chapter or
8 G.S. 108A-29. (ii) Any claimant or employer or their legal representatives
9 shall be supplied with information from the records of the Division to the
10 extent necessary for the proper presentation of claims or defenses in any
11 proceeding under this Chapter. Notwithstanding any other provision of law,
12 any claimant may be supplied, subject to restrictions as the Division may by
13 regulation prescribe, with any information contained in his payment record
14 or on his most recent monetary determination, and any individual, as well as
15 any interested employer, may be supplied with information as to the
16 individual's potential benefit rights from claim records. (iii) Subject to
17 restrictions as the Secretary may by regulation provide, information from the
18 records of the Division may be made available to any agency or public
19 official for any purpose for which disclosure is required by statute or
20 regulation. (iv) The Division may, in its sole discretion, permit the use of
21 information in its possession by public officials in the performance of their
22 public duties. (v) The Division shall release the payment and the amount of
23 unemployment compensation benefits upon receipt of a subpoena in a
24 proceeding involving child support. (vi) The Division shall furnish to the
25 State Controller any information the State Controller needs to prepare and
26 publish a comprehensive annual financial report of the State or to track
27 debtors of the State. (vii) The Secretary may disclose or authorize
28 redisclosure of any confidential information to an individual, agency, or
29 entity, public or private, consistent with the requirements enumerated in 20
30 C.F.R. Part 603 or any successor regulation and any written guidance
31 promulgated and issued by the U.S. Department of Labor consistent with 20
32 C.F.R. Part 603.

33"

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

35
36 **PART VII. EFFECTIVE DATE**

37 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
38 law.