

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE BILL 532\*  
PROPOSED COMMITTEE SUBSTITUTE S532-PCS15167-TD-44**

Short Title: ESC/Jobs Reform.

(Public)

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Sponsors:

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Referred to:

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April 12, 2011

A BILL TO BE ENTITLED

1 AN ACT TO REFORM THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA  
2 BY CREATING THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE  
3 DEPARTMENT OF COMMERCE, TRANSFERRING THE FUNCTIONS OF THE  
4 EMPLOYMENT SECURITY COMMISSION TO THAT DIVISION, MAKING THE  
5 DIVISION SUBJECT TO RULE MAKING UNDER ARTICLE 2A OF CHAPTER 150B  
6 OF THE GENERAL STATUTES, AND BY MAKING OTHER MODIFICATIONS AND  
7 CONFORMING CHANGES TO ALIGN THE EMPLOYMENT SECURITY  
8 FUNCTIONS OF STATE GOVERNMENT UNDER THE DIRECT LEADERSHIP OF  
9 THE SECRETARY OF COMMERCE.

10 The General Assembly of North Carolina enacts:

11  
12  
13 **PART I. TRANSFER; GENERAL PROVISIONS; RULE MAKING**

14 **SECTION 1.1.** Transfers of agency, powers, duties. – The statutory authority,  
15 powers, duties, functions, records, personnel, property, and unexpended balances of  
16 appropriations, allocations, or other funds of the Employment Security Commission are  
17 transferred to the Department of Commerce with all of the elements of a Type I transfer as  
18 defined by G.S. 143A-6.

19 **SECTION 1.2.** Continuation of duties. – Any previous assignment of duties of a  
20 quasi-legislative and quasi-judicial nature by the Governor or General Assembly shall have  
21 continued validity with the transfer under this act. Except as otherwise specifically provided in  
22 this act, each enumerated commission, board, office, bureau, or other subunit of State  
23 government transferred to the Secretary of Commerce and the Department of Commerce,  
24 Division of Employment Security, is a continuation of the former entity for purposes of  
25 succession to all the rights, powers, duties, and obligations of the former. Where the former  
26 entities are referred to by law, contract, or other document in their former name, the Secretary  
27 of Commerce and the Department of Commerce, Division of Employment Security, are  
28 charged with exercising the functions of the former named entity.

29 **SECTION 1.3.** No action or proceeding pending on November 1, 2011, brought by  
30 or against the Employment Security Commission shall be affected by any provision of this act,  
31 but the same may be prosecuted or defended in the name of the Department of Commerce,  
32 Division of Employment Security. In these actions and proceedings, the Secretary of



1 Commerce or the Department of Commerce shall be substituted as a party upon proper  
2 application to the courts or other administrative or quasi-judicial bodies.

3 Any business or other matter undertaken or commanded by any State program or  
4 office or contract transferred by this act to the Employment Safety and Security Commission,  
5 or by the commissioners or directors thereof, pertaining to or connected with the functions,  
6 powers, obligations, and duties set forth herein, which is pending on the date this act becomes  
7 effective, may be conducted and completed by the Employment Safety and Security  
8 Commission in the same manner and under the same terms and conditions and with the same  
9 effect as if conducted and completed by the original program, office, or commissioners, or  
10 directors thereof.

11 **SECTION 1.4.** G.S. 143B-431(a)(1) and (a)(2) read as rewritten:

12 **"§ 143B-431. Department of Commerce – functions.**

13 (a) The functions of the Department of Commerce, except as otherwise expressly  
14 provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

15 (1) All of the executive functions of the State in relation to economic  
16 development and employment security, including by way of enumeration  
17 and not of limitation, the expansion and recruitment of environmentally  
18 sound industry, labor force development, the administration of  
19 unemployment insurance, the promotion of and assistance in the orderly  
20 development of North Carolina counties and communities, the promotion  
21 and growth of the travel and tourism industries, the development of our  
22 State's ports, energy resource management and energy policy development;

23 (2) All functions, powers, duties and obligations heretofore vested in an agency  
24 enumerated in Article 15 of Chapter 143A, to wit:

- 25 a. The State Board of Alcoholic Control,
- 26 b. The North Carolina Utilities Commission,
- 27 ~~c. The Employment Security Commission,~~
- 28 d. The North Carolina Industrial Commission,
- 29 e. State Banking Commission and the Commissioner of Banks,
- 30 f. Savings Institutions Division,
- 31 g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
- 32 h. Credit Union Commission,
- 33 i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17,  
34 2004.

35 j. The North Carolina Mutual Burial Association Commission,

36 k. The North Carolina Rural Electrification Authority,

37 l. The North Carolina State Ports Authority,

38 all of which enumerated agencies are hereby expressly transferred by a Type  
39 II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted  
40 Department of Commerce; and

41 ...."

42 **SECTION 1.5.** G.S. 143B-433 reads as rewritten:

43 **"§ 143B-433. Department of Commerce – organization.**

44 The Department of Commerce shall be organized to include:

45 (1) The following agencies:

- 46 a. The North Carolina Alcoholic Beverage Control Commission.
- 47 b. The North Carolina Utilities Commission.
- 48 ~~c. The Employment Security Commission.~~
- 49 d. The North Carolina Industrial Commission.
- 50 e. State Banking Commission.
- 51 f. Savings Institutions Division.

- 1 g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.  
 2 h. Credit Union Commission.  
 3 i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17,  
 4 2004.  
 5 j. The North Carolina Mutual Burial Association Commission.  
 6 k. North Carolina Cemetery Commission.  
 7 l. The North Carolina Rural Electrification Authority.  
 8 m. Repealed by Session Laws 1985, c. 757, s. 179(d).  
 9 n. North Carolina Science and Technology Research Center.  
 10 o. The North Carolina State Ports Authority.  
 11 p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2,  
 12 2010.  
 13 q. Economic Development Board.  
 14 r. Labor Force Development Council.  
 15 s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective  
 16 September 30, 2000.  
 17 u. Navigation and Pilotage Commissions established by Chapter 76 of  
 18 the General Statutes.  
 19 v. Repealed by Session Laws 1993, c. 321, s. 313b.  
 20 (2) Those agencies which are transferred to the Department of Commerce  
 21 including the:  
 22 a. Community Assistance Division.  
 23 b. Community Development Council.  
 24 c. Employment and Training Division.  
 25 d. Job Training Coordinating Council.  
 26 (3) The Division of Employment Security.  
 27 (4) Such divisions as may be established pursuant to Article 1 of this Chapter."

28 **SECTION 1.6.** G.S. 143B-343(c) reads as rewritten:

29 "(c) Advice and Staff. – The Secretaries of Administration, State, and Transportation,  
 30 the Commissioners of Agriculture and Labor, and the State Treasurer, or their designees, shall  
 31 advise the Board on economic development activities within the responsibility of their  
 32 respective departments. Clerical and professional staff support to the Economic Development  
 33 Board shall be provided by an Interagency Economic Development Group composed of  
 34 representatives of the following State agencies:

- 35 (1) The Department of Administration.  
 36 (2) The Department of Agriculture and Consumer Services.  
 37 (3) The Division of Employment Security ~~Commission~~.  
 38 (4) The Department of Labor.  
 39 (5) The Department of Transportation.

40 The Department of Commerce shall have the responsibility for coordinating the activities and  
 41 efforts of the Interagency Economic Development Group."

42 **SECTION 1.7.** G.S. 143B-438.10(b)(1) reads as rewritten:

43 "(b) Membership; Terms. – The Commission on Workforce Development shall consist  
 44 of 38 members appointed as follows:

- 45 (1) By virtue of their offices, the following department and agency heads or  
 46 their respective designees shall serve on the Commission: the Secretary of  
 47 the Department of Health and Human Services, the ~~Chair~~ Assistant Secretary  
 48 of Commerce in charge of the Division of Employment Security  
 49 ~~Commission~~, ~~Security~~, the Superintendent of Public Instruction, the  
 50 President of the Community Colleges System Office, the Commissioner of

1 the Department of Labor, and the Secretary of the Department of  
2 Commerce."

3 **SECTION 1.8.** G.S. 143B-438.16 reads as rewritten:

4 "**§ 143B-438.16. Trade Jobs for Success initiative established; funds; program**  
5 **components and guidelines.**

6 (a) There is established within the Department of Commerce the Trade Jobs for Success  
7 (TJS) initiative. The Department of Commerce shall lead the TJS initiative in cooperation with  
8 the ~~Employment Security Commission and the~~ Community Colleges System Office.

9 (b) There is created in the Department of Commerce a special, nonreverting fund called  
10 the Trade Jobs for Success Fund (Fund). The Fund shall be used to implement the TJS  
11 initiative. The Department of Commerce shall develop guidelines for administration of the TJS  
12 initiative and the Fund. An advisory council shall assist the Secretary of Commerce in the  
13 administration of the Fund. The members of the advisory council shall include:

- 14 (1) The ~~Chairman~~ Assistant Secretary of Commerce in charge of the Division of  
15 Employment Security Commission Security or that officer's designee.
- 16 (2) The President of the Community Colleges System or that officer's designee.
- 17 (3) The State Auditor or that officer's designee.
- 18 (4) A representative of a statewide association to further the interests of business  
19 and industry in North Carolina designated by the Secretary of Commerce.

20 (c) At a minimum, the Trade Jobs for Success initiative shall include the following  
21 programmatic components:

- 22 (1) Displaced workers participating in the TJS initiative shall receive (i)  
23 on-the-job training to learn new job skills and (ii) educational assistance or  
24 remedial education specifically designed to help displaced workers qualify  
25 for new jobs.
- 26 (2) Displaced workers participating in the TJS initiative shall not lose their  
27 eligibility for unemployment insurance benefits while they are in the  
28 program and may receive wage supplements, as appropriate.
- 29 (3) In-State relocation assistance, in appropriate instances, where participating  
30 individuals must relocate to work for participating employers.
- 31 (4) Mentoring, both on and off the job, shall be provided to participants in a  
32 dignified manner through telephone assistance and other appropriate means.
- 33 (5) Financial assistance and other incentives may be provided to participating  
34 employers who provide jobs to participating displaced workers to help  
35 defray the costs of providing the on-the-job training opportunities.
- 36 (6) Work provided by participating employers as part of the TJS initiative must  
37 be full-time employment. Wages paid shall not be less than the hourly  
38 entry-level wage normally paid by the employer.
- 39 (7) Staff of the ~~Division of the Employment Security Commission, Security,~~ in  
40 conjunction with other appropriate staff of the Department of Commerce,  
41 shall match participating displaced workers to the most suitable employer.
- 42 (8) Local Employment Security ~~Commission~~ offices operated by the Division of  
43 Employment Security and community colleges shall enter into partnership  
44 agreements with local chambers of commerce, and other appropriate  
45 organizations, that would encourage employer participation in the TJS  
46 initiative.
- 47 (9) Tracking of participating individuals and businesses by the Department of  
48 Commerce ~~and the Employment Security Commission~~ to assure program  
49 integrity and effectiveness and the compilation of data to generate the  
50 reports necessary to evaluate the success of the TJS initiative.

1 (10) Coordination and integration of existing programs in the Department of  
2 Commerce, the ~~Employment Security Commission, Division of Employment~~  
3 ~~Security~~, and the North Carolina Community College System in a manner  
4 that maximizes the flexibility of these agencies to effectively assist  
5 participating individuals and businesses."

6 **SECTION 1.9.** G.S. 143B-438.17(c) reads as rewritten:

7 "(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the  
8 ~~Employment Security Commission Division of Employment Security~~ and the Community  
9 Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs  
10 for Success initiative. The annual report shall include a detailed explanation of outcomes and  
11 future planning for the TJS initiative and legislative proposals and recommendations regarding  
12 statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative.  
13 Copies of the annual report shall be provided to the Governor, to the Joint Legislative  
14 Commission on Governmental Operations, to the chairs of the Senate and House of  
15 Representatives Appropriations Committees, and to the Fiscal Research Division of the General  
16 Assembly."

17 **SECTION 1.10.(a)** G.S. 150B-1(c) reads as rewritten:

18 "§ 150B-1. Policy and scope.

19 ...

20 (c) Full Exemptions. – This Chapter applies to every agency except:

- 21 (1) The North Carolina National Guard in exercising its court-martial  
22 jurisdiction.
- 23 (2) The Department of Health and Human Services in exercising its authority  
24 over the Camp Butner reservation granted in Article 6 of Chapter 122C of  
25 the General Statutes.
- 26 (3) The Utilities Commission.
- 27 (4) The Industrial Commission.
- 28 ~~(5) The Employment Security Commission.~~
- 29 (6) The State Board of Elections in administering the HAVA Administrative  
30 Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- 31 (7) The North Carolina State Lottery.
- 32 (8) (Expires June 30, 2012) Except as provided in G.S. 150B-21.1B, any agency  
33 with respect to contracts, disputes, protests, and/or claims arising out of or  
34 relating to the implementation of the American Recovery and Reinvestment  
35 Act of 2009 (Public Law 111-5)."

36 **SECTION 1.10.(b)** G.S. 150B-1(e) is amended by adding a new subdivision to  
37 read:

38 "(e) Exemptions From Contested Case Provisions. – The contested case provisions of  
39 this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter.  
40 The contested case provisions of this Chapter do not apply to the following:

41 ...

42 (18) The Department of Commerce for hearings and appeals authorized under  
43 Chapter 96 of the General Statutes."

44 **SECTION 1.10.(c)** The Department of Commerce, Division of Employment  
45 Security, shall adopt all existing rules and regulations in accordance with Article 2A of Chapter  
46 150B of the General Statutes. Any existing rule that has not been readopted by December 31,  
47 2012, shall expire.

48  
49 **PART II. SUBSTANTIVE AMENDMENTS AND CONFORMING CHANGES TO THE**  
50 **EMPLOYMENT SECURITY LAWS**

51 **SECTION 2.1.** G.S. 96-1 reads as rewritten:

"Article 1.

~~"Employment Security Commission. Division of Employment Security.~~

**"§ 96-1. Title.**

This Chapter shall be known and may be cited as the "Employment Security Law." Any reference to the Unemployment Compensation Commission shall be deemed a reference to the ~~Employment Security Commission—Department of Commerce, Division of Employment Security (DES),~~ and all powers, duties, funds, records, etc., of the Unemployment Compensation Commission are transferred to the ~~Employment Security Commission. Commission and the Employment Security Commission are transferred to the DES.~~"

**SECTION 2.2.** G.S. 96-3 reads as rewritten:

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

The Division of Employment Security (DES) is created within the Department of Commerce and shall administer the provisions of this Chapter under the supervision of the Assistant Secretary of Commerce through two coordinate sections: the Employment Security Section and the Employment Insurance Section. The Employment Security Section shall administer the employment services functions of the Division. The Employment Insurance Section shall administer the unemployment taxation and assessment functions of the Division.

(a) ~~Organization.— There is hereby created a commission to be known as the Employment Security Commission of North Carolina. The Commission shall consist of seven members to be appointed by the Governor on or before July 1, 1941. The Governor shall have the power to designate the member of said Commission who shall act as the chairman thereof. The chairman of the Commission shall not engage in any other business, vocation or employment. Three members of the Commission shall be appointed by the Governor to serve for a term of two years. Three members shall be appointed to serve for a term of four years, and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four years each, thereafter, and the member of said Commission designated by the Governor as chairman shall serve at the pleasure of the Governor. Any member appointed to fill a vacancy occurring in any of the appointments made by the Governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Governor may at any time after notice and hearing, remove any Commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.~~

(b) ~~Divisions.— The Commission shall establish two coordinate divisions: the North Carolina State Employment Service Division, created pursuant to G.S. 96-20, and the Unemployment Insurance Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel and duties, except insofar as the Commission may find that such separation is impracticable. Notwithstanding any other provision of this Chapter, administrative organization of the agency shall be in accordance with that which the Commission finds most desirable in order to perform the duties and functions of the agency.~~

(c) ~~Salaries.— The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be the same as the salary fixed by the General Assembly in the Current Operations Appropriations Act for the Secretary of Commerce, and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund.~~

1 (d) Quorum.—The chairman or his designee and three members of the Commission  
2 shall constitute a quorum."

3 **SECTION 2.3.** G.S. 96-4 reads as rewritten:

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

6 (a) Duties and Powers of ~~Commission—the Secretary and Assistant Secretary.~~ – It shall  
7 be the duty of the ~~Commission—Secretary of the Department of Commerce~~ to administer this  
8 ~~Chapter.—Chapter.~~ The Secretary shall appoint an Assistant Secretary to assist in the  
9 implementation of the Employment Security Laws and the oversight of the Division of  
10 Employment Security.

11 (b) Board of Review. – The Governor shall appoint a three-person Board of Review to  
12 determine appeals policies and procedures and to hear appeals arising from the decisions and  
13 determinations of the Employment Security Section and the Employment Insurance Section.  
14 The Board of Review shall be comprised of one member representing employers, one member  
15 representing employees, and one member representing the general public. Members of the  
16 Board of Review are subject to confirmation by the General Assembly and shall serve four-year  
17 terms. The member appointed to represent the general public shall serve as chair of the Board  
18 of Review and shall be a licensed attorney. The annual salaries of the Board of Review shall be  
19 set by the General Assembly in the current Operations Appropriations Act.~~The Commission~~  
20 ~~shall meet at least once in each 60 days and may hold special meetings at any time at the call of~~  
21 ~~the chairman or any three members of the Commission, and the Commission shall have power~~  
22 ~~and authority to adopt, amend, or rescind such rules and regulations, to employ such persons,~~  
23 ~~make such expenditures, require such reports, make such investigations, and take such other~~  
24 ~~action as it deems necessary or suitable in the administration of this Chapter. Such rules and~~  
25 ~~regulations shall be effective upon publication in the manner, not inconsistent with the~~  
26 ~~provisions of this Chapter, which the Commission shall prescribe. The Commission~~

27 (c) Procedures. – The Secretary of the Department of Commerce shall determine its  
28 ~~own—the~~ organization and methods of procedure of the Division, in accordance with the  
29 provisions of this Chapter, and shall have an official seal which shall be judicially noticed. The  
30 ~~chairman of said Commission shall,~~ Assistant Secretary shall, except as otherwise provided by  
31 the ~~Commission,—Secretary,~~ be vested with all authority of the ~~Commission,—Secretary~~ under  
32 this Chapter, including the authority to conduct hearings and make decisions and  
33 determinations, ~~when the Commission is not in session~~ and shall execute all orders, rules and  
34 regulations established by ~~said Commission.—the Secretary.~~ Not later than November 20  
35 preceding the meeting of the General Assembly, the ~~Commission—Secretary~~ shall submit to the  
36 Governor a report covering the administration and operation of this Chapter during the  
37 preceding biennium, and shall make such recommendation for amendments to this Chapter as  
38 the ~~Commission—Secretary~~ deems proper. ~~Such—The~~ report shall include a balance sheet of the  
39 moneys in the fund in which there shall be provided, if possible, a reserve against the liability  
40 in future years to pay benefits in excess of the then current contributions, which reserve shall be  
41 set up by the ~~Commission—Secretary~~ in accordance with accepted actuarial principles on the  
42 basis of statistics of employment, business activity, and other relevant factors for the longest  
43 possible period. Whenever the ~~Commission—Secretary~~ believes that a change in contribution or  
44 benefit rates will become necessary to protect the solvency of the fund, ~~it—the~~ Secretary shall  
45 promptly so inform the Governor and the legislature, and make recommendations with respect  
46 thereto.

47 ~~(b)(d) Regulations and General and Special Rules.—Rule Making.~~ – Rules adopted to  
48 implement the Employment Security Laws in accordance with this Chapter shall be made  
49 pursuant to Article 2A of Chapter 150B of the General Statutes, the Administrative Procedures  
50 Act. General and special rules may be adopted, amended, or rescinded by the Commission only  
51 after public hearing or opportunity to be heard thereon, of which proper notice has been given

1 by mail to the last known address in cases of special rules, or by publication as herein provided,  
2 and by one publication as herein provided as to general rules. The Commission shall not take  
3 final action on a general or special rule that has a substantial economic impact, as defined in  
4 G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management has  
5 prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with  
6 the Secretary of State and publication in one or more newspapers of general circulation in this  
7 State. Special rules shall become effective 10 days after notification to or mailing to the last  
8 known address of the individuals or concerns affected thereby. Before the adoption,  
9 amendment, or repeal of any permanent regulation, the Commission shall publish notice of the  
10 public hearing and offer any person an opportunity to present data, opinions, and arguments.  
11 The notice shall be published in one or more newspapers of general circulation in this State at  
12 least 10 days before the public hearing and at least 20 days prior to the proposed effective date  
13 of the proposed permanent regulation. The published notice of public hearing shall include the  
14 time and place of the public hearing; a statement of the manner in which data, opinions, and  
15 arguments may be submitted to or before the Commission; a statement of the terms or  
16 substance of the proposed regulation; a statement of whether a fiscal note has been or will be  
17 prepared for the proposed regulation; and the proposed effective date of the regulation. Any  
18 permanent regulation adopted after following the above procedure shall become effective on its  
19 effective date and after it is published in the manner provided for in subsection (c) as well as  
20 such additional publication as the Commission deems appropriate. Additionally, the  
21 Commission shall provide notice of adoption by mail to the last known addresses of all persons  
22 who submitted data, opinions, or arguments to the Commission with respect to the regulation.  
23 Temporary regulations may be adopted, amended, or rescinded by the Commission and shall  
24 become effective in the manner and at the time prescribed by the Commission but shall remain  
25 in force for no longer than 120 days.

26 ~~(e)~~(e) Publication. – The ~~Commission~~Division shall cause to be printed for distribution to  
27 the public the text of this Chapter, the ~~Commission's~~regulations and generalDivision's rules,  
28 and any other material the ~~Commission~~Division deems relevant and suitable, and shall furnish  
29 the same to any person upon application therefor. All publications printed shall comply with  
30 the requirements of G.S. 143-170.1.

31 ~~(d)~~(f) Personnel. – Subject to other provisions of this Chapter, the ~~Commission~~Assistant  
32 Secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of  
33 such officers, accountants, attorneys, experts, and other persons as may be necessary in the  
34 performance of ~~its~~the Division's duties under this Chapter. The Assistant Secretary  
35 shall provide for the holding of examinations to determine the qualifications of applicants for  
36 the positions so classified, and except for temporary appointments not to exceed six months in  
37 duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such  
38 examinations. All positions shall be filled by persons selected and appointed on a nonpartisan  
39 merit basis. The ~~Commission~~Secretary of Commerce may delegate to any such person so  
40 appointed such power and authority as ~~it~~the Secretary deems reasonable and proper for the  
41 effective administration of this Chapter, and may, in ~~its~~his or her discretion, bond any person  
42 handling moneys or signing checks hereunder.

43 ~~(e)~~(g) Advisory Councils. – ~~The Governor shall appoint a State Advisory Council~~  
44 ~~composed of men and women representing employers, employees, and the general public, in~~  
45 ~~equal numbers. The Chairman of the Commission shall be a member of the State Advisory~~  
46 ~~Council and shall serve as its chairman. There shall be 15 members of the Council (other than~~  
47 ~~its chairman) who shall each be appointed for a term of four years.~~The State Advisory Council  
48 shall be composed of the Assistant Secretary and 15 persons representing employers,  
49 employees, and the general public, to be appointed as follows:

50 (1) Five members appointed by the Governor.

51 (2) Five members appointed by the President Pro Tempore of the Senate.



1           (3) Five members appointed by the Speaker of the House of Representatives.  
2 Each member shall be appointed for a term of four years. Vacancies on the State Advisory  
3 Council shall be filled by the appointing authority. The Assistant Secretary shall serve as chair.  
4 A quorum of the State Advisory Council shall consist of the chairman, or such appointed  
5 member as he may designate, plus one half of the total appointed members. The function of the  
6 Council shall be to aid the ~~Commission~~-Division in formulating policies and discussing  
7 problems related to the administration of this Chapter. Each member of the State Advisory  
8 Council attending meetings of the Council shall be paid the same amount per diem for his or  
9 her services as is provided for the members of other State boards, commissions, and  
10 committees who receive compensation for their services, including necessary time spent in  
11 traveling to and from his place of residence within the State to the place of meeting while  
12 engaged in the discharge of the duties of his office, and his actual mileage and subsistence at  
13 the same rate allowed to State officials.

14       ~~(f)~~(h) Employment Stabilization. – The ~~Commission~~, Secretary of Commerce, in  
15 consultation with the Assistant Secretary and with the advice and aid of its ~~the~~ advisory  
16 councils, and through its appropriate divisions, shall take all appropriate steps to reduce and  
17 prevent unemployment; to encourage and assist in the adoption of practical methods of  
18 vocational training, retraining and vocational guidance; to investigate, recommend, advise, and  
19 assist in the establishment and operation, by municipalities, counties, school districts, and the  
20 State, of reserves for public works to be used in times of business depression and  
21 unemployment; to promote the reemployment of unemployed workers throughout the State in  
22 every other way that may be feasible; and to these ends to carry on and publish the results of  
23 investigations and research studies.

24       ~~(g)~~(i) Records and Reports. –

25       (1) Each employing unit shall keep true and accurate employment records,  
26 containing such information as the ~~Commission~~-Division may prescribe.  
27 ~~Such~~ The records shall be open to inspection and be subject to being copied  
28 by the ~~Commission~~-Division or its authorized representatives at any  
29 reasonable time and as often as may be necessary. Any employing unit doing  
30 business in North Carolina shall make available in this State to the  
31 ~~Commission~~, Division, such information with respect to persons, firms, or  
32 other employing units performing services for it which the ~~Commission~~  
33 Secretary deems necessary in connection with the administration of this  
34 Chapter. The ~~Commission~~-Division may require from any employing unit  
35 any sworn or unsworn reports, with respect to persons employed by it, which  
36 the ~~Commission~~Secretary deems necessary for the effective administration  
37 of this Chapter.

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

1 determining whether such employing unit is an employer within the meaning  
2 of this Chapter.

3 (j) Hearings. – The Assistant Secretary shall appoint hearing officers or appeals  
4 referees to hear contested matters arising from the Employment Security Section and the  
5 Employment Insurance Section. Appeals from the decisions of the hearing officers or appeals  
6 referees shall be heard by the Board of Review.

7 ~~(h)(k)~~ Oaths and Witnesses. – In the discharge of the duties imposed by this Chapter, the  
8 ~~chairman~~ Assistant Secretary, the Chair of the Board of Review, and any duly authorized  
9 representative ~~or member of the Commission of the Division~~ shall have power to administer  
10 oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel  
11 the attendance of witnesses and the production of books, papers, correspondence, memoranda,  
12 and other records deemed necessary as evidence in connection with a disputed claim or the  
13 administration of this Chapter. Upon a motion, the ~~chairman~~ Assistant Secretary, the Chair of  
14 the Board of Review, and any duly authorized representative ~~or member of the Commission of~~  
15 the Division may quash a subpoena if, after a hearing, ~~the Commission finds any of the~~  
16 following: any of the following findings are made:

- 17 (1) The subpoena requires the production of evidence that does not relate to a  
18 matter in issue.
- 19 (2) The subpoena fails to describe with sufficient particularity the evidence  
20 required to be produced.
- 21 (3) The subpoena is subject to being quashed for any other reason sufficient in  
22 law.

23 ~~(h)(l)~~ Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a  
24 subpoena pursuant to subsection ~~(h)(k)~~ of this section shall be heard at least ~~40~~20 days prior to  
25 the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is  
26 subject to immediate judicial review in the Superior Court of Wake County or in the superior  
27 court of the county where the person subject to the subpoena resides.

28 ~~(i)(m)~~ Subpoenas. – In case of contumacy by, or refusal to obey a subpoena issued to any  
29 person by the ~~Commission or its Secretary,~~ the Assistant Secretary, the Board of Review, or the  
30 Division's authorized representative, any clerk of a superior court of this State within the  
31 jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person  
32 guilty of contumacy or refusal to obey is found or resides or transacts business, upon  
33 application by the ~~Commission, Division,~~ or its duly authorized representatives, shall have  
34 jurisdiction to issue to such person an order requiring such person to appear before the  
35 ~~Commission, Division,~~ or its duly authorized representatives, there to produce evidence if so  
36 ordered, or there to give testimony touching upon the matter under investigation or in question;  
37 and any failure to obey such order of the said clerk of superior court may be punished by ~~the~~  
38 ~~said clerk of superior court~~ any Superior Court judge as a contempt of said court. Any person  
39 who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry  
40 or to produce books, papers, correspondence, memoranda, or other records in obedience to a  
41 subpoena of the ~~Commission, Division,~~ shall be punished by a fine of not more than fifty  
42 dollars ~~(\$50.00) or by imprisonment for not longer than 30 days. (\$50.00).~~

43 ~~(j)(n)~~ Protection against Self-Incrimination. – No person shall be excused from attending  
44 and testifying or from producing books, papers, correspondence, memoranda, and other records  
45 before the ~~Commission~~ Division, Board of Review, or in obedience to the subpoena of the  
46 ~~Commission~~ Division, Board of Review, or any member thereof, or any duly authorized  
47 representative of the ~~Commission, Division,~~ or Board of Review in any cause or proceeding  
48 before the ~~Commission, Division,~~ on the ground that the testimony or evidence, documentary  
49 or otherwise, required of him may tend to incriminate him or subject him to a penalty or  
50 forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or  
51 on account of any transaction, matter, or thing concerning which he is compelled, after having

1 claimed his privilege against self-incrimination, to testify or produce evidence, documentary or  
2 otherwise, except that such individual so testifying shall not be exempt from prosecution and  
3 punishment for perjury committed in so testifying.

4 ~~(k)(o)~~ State-Federal Cooperation. – In the administration of this Chapter, the ~~Commission~~  
5 Board of Review or Division shall cooperate, to the fullest extent consistent with the provisions  
6 of this Chapter, with the federal agency, official, or bureau fully authorized and empowered to  
7 administer the provisions of the Social Security Act approved August 14, 1935, as amended,  
8 shall make such reports, in such form and containing such information as such federal agency,  
9 official, or bureau may from time to time require, and shall comply with such provisions as  
10 such federal agency, official, or bureau may from time to time find necessary to assure the  
11 correctness and verification of such reports; and shall comply with the regulations prescribed  
12 by such agency, official, or bureau governing the expenditures of such sums as may be allotted  
13 and paid to this State under Title III of the Social Security Act for the purpose of assisting in  
14 the administration of this Chapter. The ~~Commission-Board of Review or Division~~ shall further  
15 make its records available to the Railroad Retirement Board, created by the Railroad  
16 Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the  
17 Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies  
18 thereof as the Board shall deem necessary for its purposes in accordance with the provisions of  
19 section 303 (c) of the Social Security Act as amended.

20 Upon request therefor, the ~~Commission-Division~~ shall furnish to any agency of the United  
21 States charged with the administration of public works or assistance through public  
22 employment, the name, address, ordinary occupation, and employment status of each recipient  
23 of benefits, and such recipient's rights to further benefits under this Chapter.

24 The ~~Commission-Division~~ is authorized to make such investigations, secure and transmit  
25 such information, make available such services and facilities and exercise such of the other  
26 powers provided herein with respect to the administration of this Chapter as it deems necessary  
27 or appropriate to facilitate the administration of any employment security or public  
28 employment service law, and in like manner, to accept and utilize information, services and  
29 facilities made available to this State by the agency charged with the administration of such  
30 other employment security or public employment service law.

31 The ~~Commission-Division~~ shall fully cooperate with the agencies of other states and shall  
32 make every proper effort within its means to oppose and prevent any further action which  
33 would, in its judgment, tend to effect complete or substantial federalization of State  
34 unemployment insurance funds or State employment security programs.

35 ~~(H)(p)~~ Reciprocal Arrangements. –

36 (1) The ~~Commission-Secretary~~ is hereby authorized to enter into reciprocal  
37 arrangements with appropriate and duly authorized agencies of other states  
38 or of the federal government, or both, whereby:

39 a. Services performed by an individual for a single employing unit for  
40 which services are customarily performed in more than one state  
41 shall be deemed to be services performed entirely within any one of  
42 the states

- 43 1. In which any part of such individual's service is performed or
- 44 2. In which such individual has his residence or
- 45 3. In which the employing unit maintains a place of business,  
46 provided there is in effect, as to such services, an election by  
47 the employing unit, approved by the agency charged with the  
48 administration of such state's employment security law,  
49 pursuant to which the services performed by such individual  
50 for such employing unit are deemed to be performed entirely  
51 within such state.

- 1           b.     Combining wage credits. – The ~~Commission~~Division shall  
2           participate in any arrangements for the payment of compensation on  
3           the basis of combining an individual's wages and employment  
4           covered under this Chapter with his wages and employment covered  
5           under one or more laws of the federal government and the  
6           unemployment compensation laws of other states which are approved  
7           by the United States Secretary of Labor in consultation with the state  
8           unemployment compensation agencies as reasonably calculated to  
9           assure the prompt and full payment of compensation in such  
10          situations and which include provisions for (1) applying the base  
11          period of a single state law to a claim involving the combining of an  
12          individual's wages and employment covered under two or more state  
13          unemployment compensation laws, and (2) avoiding the duplicate  
14          use of wages and employment by reason of such combining.
- 15          c.     The services of the ~~Commission~~Division as agent may be made  
16          available to other states in taking interstate claims for such states.
- 17          d.     Contributions due under this Chapter with respect to wages for  
18          insured work shall for the purposes of G.S. 96-10 be deemed to have  
19          been paid to the fund as of the date payment was made as  
20          contributions therefor under another state or federal employment  
21          security law, but no such arrangement shall be entered into unless it  
22          contains provisions for such reimbursement to the fund of such  
23          contributions as the ~~Commission~~Division finds will be fair and  
24          reasonable as to all affected interests.
- 25          e.     The services of the ~~Commission~~Division may be made available to  
26          such other agencies to assist in the enforcement and collection of  
27          judgments of such other agencies.
- 28          f.     The services on vessels engaged in interstate or foreign commerce  
29          for a single employer, wherever performed, shall be deemed  
30          performed within this State or within such other state.
- 31          g.     Benefits paid by agencies of other states may be reimbursed to such  
32          agencies in cases where services of the claimant were "employment"  
33          under this Chapter and contributions have been paid by the employer  
34          to this agency on remuneration paid for such services; provided the  
35          amount of such reimbursement shall not exceed the amount of  
36          benefits such claimant would have been entitled to receive under the  
37          provisions of this Chapter.
- 38        (2)     Reimbursements paid from the fund pursuant to subparagraphs b and c of  
39        subdivision (1) of this subsection shall be deemed to be benefits for the  
40        purpose of G.S. 96-6, 96-9, 96-12 and 96-12.01. The ~~Commission~~Division  
41        is authorized to make to other states or federal agencies and to receive from  
42        such other state or federal agencies, reimbursements from or to the fund, in  
43        accordance with arrangements entered into pursuant to subdivision (1) of  
44        this subsection.
- 45        (3)     To the extent permissible under the laws and Constitution of the United  
46        States, the ~~Commission~~Division is authorized to enter into or cooperate in  
47        arrangements whereby facilities and services provided under this Chapter  
48        and facilities and services provided under the employment security law of  
49        any foreign government, may be utilized for the taking of claims and the  
50        payment of benefits under the Employment Security Law of this State or  
51        under a similar law of such government.

1       ~~(m)(q)~~ The ~~Commission-Division~~ after due notice shall have the right and power to hold  
2 and conduct hearings for the purpose of determining the rights, status and liabilities of any  
3 "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and  
4 subdivisions thereunder. The ~~Commission-Division~~ shall have the power and authority to  
5 determine any and all questions and issues of fact or questions of law that may arise under the  
6 Employment Security Law that may affect the rights, liabilities and status of any employing  
7 unit or employer as heretofore defined by the Employment Security Law including the right to  
8 determine the amount of contributions, if any, which may be due the ~~Commission-Division~~ by  
9 any employer. Hearings may be before the ~~Commission or a Deputy Commissioner-Board of~~  
10 ~~Review or the Division~~ and shall be held in the central office of the ~~Commission-Division~~ or at  
11 any other designated place within the State. They shall be open to the public and shall consist  
12 of a review of the evidence taken by a hearing officer designated by the ~~Commission-Board of~~  
13 ~~Review~~ and a determination of the law applicable to that evidence. The ~~Commission-Division~~  
14 shall provide for the taking of evidence by a hearing officer ~~who shall be a member of the legal~~  
15 ~~staff of the Commission-officer.~~ Such hearing officer shall have the same power to issue  
16 subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the  
17 ~~Commission-Division~~ and such hearings shall be recorded, and he shall transmit all testimony  
18 and records of such hearings to the ~~Commission-Board of Review or Division~~ for its  
19 determination. All such hearings conducted by such hearing officer shall be scheduled and held  
20 in any county in this State in which the employing unit or employer either resides, maintains a  
21 place of business, or conducts business; however, the ~~Commission-Board of Review or~~  
22 ~~Division~~ may require additional testimony at any hearings held by it at its office. From all  
23 decisions or determinations made by the ~~Commission or a Deputy Commissioner-Assistant~~  
24 ~~Secretary or the Board of Review,~~ any party affected thereby shall be entitled to an appeal to  
25 the superior court. Before ~~such a~~ party shall be allowed to appeal, ~~he the~~ party shall within 10  
26 days after notice of such decision or determination, file with the ~~Commission-Board of Review~~  
27 exceptions to the decision or the ~~determination of the Commission, determination,~~ which  
28 exceptions will state the grounds of objection to ~~such the~~ decision or determination. If any one  
29 of ~~such the~~ exceptions shall be overruled then ~~such the~~ party may appeal from the order  
30 overruling the exceptions, and shall, within 10 days after the decision overruling the  
31 exceptions, give notice of his appeal. When an exception is made to the facts as found by the  
32 ~~Commission-Board of Review,~~ the appeal shall be to the superior court in term time but the  
33 decision or determination of the ~~Commission-Division~~ upon such review in the superior court  
34 shall be conclusive and binding as to all questions of fact supported by any competent  
35 evidence. When an exception is made to any rulings of law, as determined by the ~~Commission,~~  
36 ~~Board of Review,~~ the appeal shall be to the judge of the superior court at chambers. The party  
37 appealing shall, within 10 days after the notice of appeal has been served, file with the  
38 ~~Commission-Board of Review~~ exceptions to the decision or determination overruling the  
39 exception which statement shall assign the errors complained of and the grounds of the appeal.  
40 Upon the filing of such statement the ~~Commission-Board of Review~~ shall, within 30 days,  
41 transmit all the papers and evidence considered by it, together with the assignments of errors  
42 filed by the appellant to a judge of the superior court holding court or residing in some district  
43 in which such appellant either resides, maintains a place of business or conducts business, or,  
44 unless the appellant objects after being given reasonable opportunity to object, to a judge of the  
45 Superior Court of Wake County: Provided, however, the 30-day period specified herein may be  
46 extended by agreement of parties. ~~If there be no exceptions to any facts as found by the~~  
47 ~~Commission the facts so found shall be binding upon the court and it shall be heard by the~~  
48 ~~judge at chambers at some place in the district, above mentioned, of which all parties shall have~~  
49 ~~10 days' notice.~~

50       ~~(n)(r)~~ The cause shall be entitled "State of North Carolina on Relationship of the  
51 ~~Employment Security-Commission-Division of Employment Security, Department of~~

1 Commerce, of North Carolina against (here insert name of appellant)," and if there are  
2 exceptions to any facts found by the ~~Commission-Board of Review~~, it shall be placed on the  
3 civil issue docket of such court and shall have precedence over other civil actions except those  
4 described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are  
5 prescribed for the trial of other civil causes. By consent of all parties the appeal may be held  
6 and determined at chambers before any judge of a district in which the appellant either resides,  
7 maintains a place of business or conducts business, or said appeal may be heard before any  
8 judge holding court therein, or in any district in which the appellant either resides, maintains a  
9 place of business or conducts business. Either party may appeal to the appellate division from  
10 the judgment of the superior court under the same rules and regulations as are prescribed by  
11 law for appeals, except that if an appeal shall be taken on behalf of the ~~Employment Security~~  
12 ~~Commission of North Carolina-Department of Commerce~~, it shall not be required to give any  
13 undertaking or make any deposit to secure the cost of such appeal and such court may advance  
14 the cause on its docket so as to give the same a speedy hearing.

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

46 ~~(p)~~(t) The conduct of hearings shall be governed by suitable rules and regulations  
47 established by the ~~Commission-Secretary of Commerce~~. The manner in which appeals and  
48 hearings shall be presented and conducted before the ~~Commission-Division~~ shall be governed  
49 by suitable rules and regulations established by ~~it-the Secretary~~. The ~~Commission-Division~~  
50 shall not be bound by common-law or statutory rules of evidence or by technical or formal

1 rules of procedure but shall conduct hearings in such manner as to ascertain the substantial  
2 rights of the parties.

3 ~~(q)(u)~~ Notices of hearing shall be issued by the ~~Commission~~Division or its authorized  
4 representative and sent by registered mail, return receipt requested, to the last known address of  
5 any employing unit, employers, persons, or firms involved. The notice shall be sent at least  
6 ~~10~~15 days prior to the hearing date and shall contain notification of the place, date, hour, and  
7 purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the  
8 ~~Commission~~Division or its authorized representative and shall order ~~him~~the witness to appear  
9 at the time, date and place shown thereon. Any bond or other undertaking required to be given  
10 in order to suspend or stay any execution shall be given payable to the ~~Employment Security~~  
11 ~~Commission of North Carolina~~Department of Commerce. Any such bond or other undertaking  
12 may be forfeited or sued upon as are any other undertakings payable to the State.

13 ~~(r)(v)~~ None of the provisions or sections herein set forth in subsections ~~(m)~~~~(q)~~~~(q)-(u)~~  
14 shall have the force and effect nor shall the same be construed or interpreted as repealing any of  
15 the provisions of G.S. 96-15 which provide for the procedure and determination of all claims  
16 for benefits and such claims for benefits shall be prosecuted and determined as provided by  
17 said G.S. 96-15.

18 ~~(s)(w)~~ Upon a finding of good cause, the ~~Commission~~Division shall have the power in its  
19 sole discretion to forgive, in whole or in part, any overpayment arising under G.S. 96-18(g)(2).

20 ~~(t)(x)~~ Confidentiality of Records, Reports, and Information Obtained from Claimants,  
21 Employers, and Units of Government.

22 (1) Confidentiality of Information Contained in Records and Reports. – (i)  
23 Except as hereinafter otherwise provided, it shall be unlawful for any person  
24 to obtain, disclose, or use, or to authorize or permit the use of any  
25 information which is obtained from any employing unit, individual, or unit  
26 of government pursuant to the administration of this Chapter or  
27 G.S. 108A-29. (ii) Any claimant or employer or their legal representatives  
28 shall be supplied with information from the records of the ~~Employment~~  
29 ~~Security Commission~~Division to the extent necessary for the proper  
30 presentation of claims or defenses in any proceeding under this Chapter.  
31 Notwithstanding any other provision of law, any claimant may be supplied,  
32 subject to restrictions as the ~~Commission~~Division may by regulation  
33 prescribe, with any information contained in his payment record or on his  
34 most recent monetary determination, and any individual, as well as any  
35 interested employer, may be supplied with information as to the individual's  
36 potential benefit rights from claim records. (iii) Subject to restrictions as the  
37 ~~Commission~~Secretary may by regulation provide, information from the  
38 records of the ~~Employment Security Commission~~Division may be made  
39 available to any agency or public official for any purpose for which  
40 disclosure is required by statute or regulation. (iv) The ~~Commission~~Division  
41 may, in its sole discretion, permit the use of information in its possession by  
42 public officials in the performance of their public duties. (v) The  
43 ~~Commission~~Division shall release the payment and the amount of  
44 unemployment compensation benefits upon receipt of a subpoena in a  
45 proceeding involving child support. (vi) The ~~Commission~~Division shall  
46 furnish to the State Controller any information the State Controller needs to  
47 prepare and publish a comprehensive annual financial report of the State or  
48 to track debtors of the State.

49 (2) Job Service Information. – (i) Except as hereinafter otherwise provided it is  
50 unlawful for any person to disclose any information obtained by the ~~North~~  
51 ~~Carolina State Employment Service~~Division from workers, employers,

1 applicants, or other persons or groups of persons in the course of  
2 administering the State Public Employment Service Program. Provided,  
3 however, that if all interested parties waive in writing the right to hold such  
4 information confidential, the information may be disclosed and used but  
5 only for those purposes that the parties and the ~~Commission~~Division have  
6 agreed upon in writing. (ii) The ~~Employment Service~~Division shall make  
7 public, through the newspapers and any other suitable media, information as  
8 to job openings and available applicants for the purpose of supplying the  
9 demand for workers and employment. (iii) The Labor Market Information  
10 ~~Division~~Unit shall collect, collate, and publish statistical and other  
11 information relating to the work under the ~~Commission's~~Division's  
12 jurisdiction; investigate economic developments, and the extent and causes  
13 of unemployment and its remedies with the view of preparing for the  
14 information of the General Assembly such facts as in the  
15 ~~Commission's~~Division's opinion may make further legislation desirable. (iv)  
16 Except as provided by ~~Commission regulation, rules adopted by the~~  
17 Division, any information published pursuant to this subdivision shall not be  
18 published in any manner revealing the identity of the applicant or the  
19 employing unit.

20 (3) Penalties for Disclosure or Improper Use. – Any person violating any  
21 provision of this section may be fined not less than twenty dollars (\$20.00)  
22 nor more than two hundred dollars (~~\$200.00~~), ~~or imprisoned for not longer~~  
23 ~~than 90 days, or both. (\$200.00).~~

24 (4) Regulations. – The ~~Commission~~Division may provide by ~~regulation~~rule for  
25 procedures by which requests for information will be considered and the  
26 methods by which such information may be disclosed. The ~~Commission~~  
27 Division is authorized to provide by regulation for the assessment of fees for  
28 securing and copying information released under this section.

29 (5) Privileged Status of Letters and Reports and Other Information Relating to  
30 Administration of this Chapter. – All letters, reports, communication, or any  
31 other matters, either oral or written, including any testimony at any hearing,  
32 from the employer or employee to each other or to the ~~Commission~~Division  
33 or any of its agents, representatives, or employees, which letters, reports, or  
34 other communication shall have been written, sent, delivered, or made in  
35 connection with the requirements of the administration of this Chapter, shall  
36 be absolutely privileged communication in any civil or criminal proceedings  
37 except proceedings pursuant to or involving the administration of this  
38 Chapter and except proceedings involving child support and only for the  
39 purpose of establishing the payment and amount of unemployment  
40 compensation benefits. Nothing in this subdivision shall be construed to  
41 prohibit the ~~Commission, Division,~~ upon written request and on a  
42 reimbursable basis only, from disclosing information from the records of a  
43 proceeding ~~before an appeals referee, deputy commissioner, or other hearing~~  
44 ~~officer by whatever name called,~~ compiled for the purpose of resolving  
45 issues raised pursuant to the Employment Security Law.

46 (6) Nothing in this subsection (t) shall operate to relieve any claimant or  
47 employing unit from disclosing any information required by this Chapter or  
48 by regulations promulgated thereunder.

49 (7) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~  
50 Division from allowing any individual or entity to examine and copy any



1 report, return, or any other written communication made by that individual  
2 or entity to the ~~Commission, Division~~, its agents, or its employees.

3 (7a) Nothing in this subsection (~~t~~) shall be construed to prevent the ~~Commission~~  
4 Division from disclosing, upon request and on a reimbursable basis only, to  
5 officers and employees of the Department of Housing and Urban  
6 Development and to representatives of a public housing agency as defined in  
7 Section 303(i)(4) of the Social Security Act, any information from the  
8 records of the ~~Employment Security Commission~~ Division with respect to  
9 individuals applying for or participating in any housing assistance program  
10 administered by the Department of Housing and Urban Development who  
11 have signed an appropriate consent form approved by the Secretary of  
12 Housing and Urban Development. It is the purpose of this paragraph to  
13 assure the ~~Employment Security Commission's~~ compliance with Section  
14 303(i)(1) of the Social Security Act and it shall be construed accordingly.

15 (7b) Nothing in this subsection (~~t~~) shall be construed to prevent the ~~Commission~~  
16 Division from disclosing, upon request and on a reimbursable basis, to the  
17 Secretary of Health and Human Services, any information from the records  
18 of the ~~Employment Security Commission~~ Division as may be required by  
19 Section 303(h)(1) of the Social Security Act. It is the purpose of this  
20 paragraph to assure compliance with Section 303(h)(1) of the Social Security  
21 Act and it shall be construed accordingly.

22 (8) Any finding of fact or law, judgment, determination, conclusion or final  
23 order made by ~~an adjudicator, appeals referee, commissioner, the~~  
24 Commission ~~the Assistant Secretary, the Board of Review, a hearing officer,~~  
25 appeals referee, or any other person acting under authority of the  
26 ~~Commission~~ Division pursuant to the Employment Security Law is not  
27 admissible or binding in any separate or subsequent action or proceeding,  
28 between a person and his present or previous employer brought before an  
29 arbitrator, court or judge of this State or the United States, regardless of  
30 whether the prior action was between the same or related parties or involved  
31 the same facts.

32 Provided, however, any finding of fact or law, judgment, determination,  
33 conclusion, or final order made by ~~an adjudicator, appeals referee,~~  
34 ~~commissioner, the Commission~~ the Assistant Secretary, the Board of  
35 Review, a hearing officer, appeals referee, or any other person acting under  
36 the authority of the ~~Commission~~ Division pursuant to the Employment  
37 Security Law shall be admissible in proceedings before the North Carolina  
38 Industrial Commission.

39 (~~u~~)(y) Service of process upon the ~~Commission~~ Division in any proceeding instituted  
40 before an administrative agency or court of this State shall be pursuant to G.S. 1A-1, Rule  
41 4(j)(4); however, notice of the requirement to withhold unemployment compensation benefits  
42 pursuant to G.S. 110-136.2(f) shall be served upon the process agent for the ~~Employment~~  
43 ~~Security Commission~~ Division by regular or courier mail.

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

46 (1) All requests for advisory rulings shall be made in writing and submitted to  
47 the ~~Chief Counsel~~ Division. Such requests shall state the facts and statutes or  
48 rules on which the ruling is requested.

49 (2) The ~~Chief Counsel~~ Division may request from any person securing an  
50 advisory ruling any additional information that is necessary. Failure to

- 1 supply such additional information shall be cause for the ~~Commission~~  
2 ~~Division~~ to decline to issue an advisory ruling.
- 3 (3) The ~~Commission-Division~~ may decline to issue an advisory ruling if any  
4 administrative or judicial proceeding is pending with the person requesting  
5 the ruling on the same factual grounds. The ~~Commission-Division~~ may  
6 decline to issue an advisory ruling if such a ruling may harm the  
7 ~~Commission's~~Division's interest in any litigation in which it is or may be a  
8 party.
- 9 (4) All advisory rulings shall be issued no later than 30 days from the date all  
10 information necessary to make a ruling has been received by the ~~Chief~~  
11 ~~Counsel~~Division.
- 12 (5) No advisory ruling shall be binding upon the ~~Commission-Division~~ provided  
13 that in any subsequent enforcement action initiated by the ~~Commission,~~  
14 Division, any person's reliance on such ruling shall be considered in  
15 mitigation of any penalty sought to be assessed."

16 **SECTION 2.4.** G.S. 96-5 reads as rewritten:

17 **"§ 96-5. Employment Security Administration Fund.**

18 (a) Special Fund. – There is hereby created in the State treasury a special fund to be  
19 known as the Employment Security Administration Fund. All moneys which are deposited or  
20 paid into this fund shall be continuously available to the ~~Commission~~Secretary for expenditure  
21 in accordance with the provisions of this Chapter, and shall not lapse at any time or be  
22 transferred to any other fund. The Employment Security Administration Fund, except as  
23 otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act  
24 (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys  
25 in this fund which are received from the federal government or any agency thereof or which are  
26 appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for  
27 the purposes and in the amounts found necessary by the Secretary of Labor for the proper and  
28 efficient administration of this Chapter. The fund shall consist of all moneys appropriated by  
29 this State, all moneys received from the United States of America, or any agency thereof,  
30 including the Secretary of Labor, and all moneys received from any other source for such  
31 purpose, and shall also include any moneys received from any agency of the United States or  
32 any other state as compensation for services or facilities supplied to such agency, any amounts  
33 received pursuant to any surety bond or insurance policy or from other sources for losses  
34 sustained by the Employment Security Administration Fund or by reason of damage to  
35 equipment or supplies purchased from moneys in such fund, and any proceeds realized from  
36 the sale or disposition of any such equipment or supplies which may no longer be necessary for  
37 the proper administration of this Chapter: Provided, any interest collected on contributions  
38 and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment  
39 Security Administration Fund created by subsection (c) of this section. All moneys in this fund  
40 shall be deposited, administered, and disbursed in the same manner and under the same  
41 conditions and requirements as is provided by law for other special funds in the State treasury,  
42 and shall be maintained in a separate account on the books of the State treasury. The State  
43 Treasurer shall be liable on his official bond for the faithful performance of his duties in  
44 connection with the Employment Security Administration Fund provided for under this  
45 Chapter. Such liability on the official bond shall be effective immediately upon the enactment  
46 of this provision, and such liability shall exist in addition to any liability upon any separate  
47 bond existent on the effective date of this provision, or which may be given in the future. All  
48 sums recovered on any surety bond for losses sustained by the Employment Security  
49 Administration Fund shall be deposited in said fund.

50 (b) Replacement of Funds Lost or Improperly Expended. – If any moneys received  
51 from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered

1 balances in the Employment Security Administration Fund or any moneys granted to this State  
2 pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this  
3 State or its political subdivisions and matched by such moneys granted to this State pursuant to  
4 the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, because of any  
5 action or contingency, to have been lost or expended for purposes other than, or in amounts in  
6 excess of those found necessary by the Secretary of Labor for the proper administration of this  
7 Chapter, it is the policy of this State that such moneys, not available from the Special  
8 Employment Security Administration Fund established by subsection (c) of this section, shall  
9 be replaced by moneys appropriated for such purpose from the general funds of this State to the  
10 Employment Security Administration Fund for expenditure as provided in subsection (a) of this  
11 section. Upon receipt of notice of such a finding by the Secretary of Labor, the ~~Commission~~  
12 Division shall promptly pay from the Special Employment Security Administration Fund such  
13 sum if available in such fund; if not available, it shall promptly report the amount required for  
14 such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to  
15 the legislature a request for the appropriation of such amount.

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

1 said fund. The moneys in the Special Employment Security Administration Fund shall be  
2 continuously available to the ~~Commission~~-Division for expenditure in accordance with the  
3 provisions of this section.

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

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

14 (e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General  
15 Assembly of North Carolina to the ~~Employment Security Commission~~-Department of  
16 Commerce, Division of Employment Security out of funds credited to and held in this State's  
17 account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States  
18 pursuant to and in accordance with section 903 of the Social Security Act, the ~~Commission~~  
19 Division is authorized to utilize such funds for the administration of the Employment Security  
20 Law, including personal services, operating and other expenses incurred in the administration  
21 of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or  
22 parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings  
23 or parts of buildings, suitable for use in this State by the ~~Employment Security Commission,~~  
24 Division, and for the payment of expenses incurred for the construction, maintenance,  
25 improvements or repair of, or alterations to, such real or personal property. Provided, that any  
26 such funds appropriated by the General Assembly shall not exceed the amount in the  
27 Unemployment Trust Fund which may be obligated for expenditure for such purposes; and  
28 provided that said funds shall not be obligated for expenditure, as herein provided, after the  
29 close of the two-year period which begins on the effective date of the appropriation.

30 (f) Employment Security ~~Commission~~-Reserve Fund. – There is created in the State  
31 treasury a special trust fund, separate and apart from all other public moneys or funds of this  
32 State, to be known as the Employment Security ~~Commission~~-Reserve Fund, hereinafter  
33 "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j  
34 shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve  
35 Fund may be used by the ~~Commission~~-Secretary for loans to the Unemployment Insurance  
36 Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay  
37 any interest required on advances under Title XII of the Social Security Act, and shall be  
38 continuously available to the ~~Commission~~-Division for expenditure in accordance with the  
39 provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian  
40 and shall invest said moneys in accordance with existing law as well as rules and regulations  
41 promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in  
42 accordance with the directions of the ~~Commission~~-Secretary and in accordance with such  
43 regulations as the ~~Commission~~-Secretary may prescribe.

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

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

- 49 (1) Fund programs, specifically for the benefit of unemployed workers or  
50 workers who have received notice of long-term layoff or permanent  
51 unemployment, which will enhance the employability of workers, including,

1 but not limited to, adult basic education, adult high school or equivalency  
2 programs, occupational skills training programs, assessment, job counseling  
3 and placement programs;

4 (2) Continue operation of local ~~Employment Security Commission~~ Division  
5 offices throughout the State; or

6 (3) Provide refunds to employers.

7 The use of funds from the Worker Training Trust Fund, for the purposes set out in  
8 the above paragraph, shall be pursuant to appropriations in the Current  
9 Operations Appropriations Act. Funds appropriated from the Worker  
10 Training Trust Fund that are unexpended and unencumbered at the end of  
11 the fiscal year for which they are appropriated shall revert to the State  
12 treasury to the credit of the Worker Training Trust Fund in accordance with  
13 G.S. 143C-1-2.

14 (g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not  
15 more than a total of twenty-five million dollars (\$25,000,000) of funds in the Employment  
16 Security ~~Commission~~ Reserve Fund established under subsection (f) of this section in securities  
17 issued by the North Carolina Technological Development Authority, Inc., the proceeds for  
18 which are directed to support investment in venture capital funds. The State Treasurer shall  
19 report to the Joint Legislative Commission on Governmental Operations and the Fiscal  
20 Research Division on October 1 and March 1 of each fiscal year on investments made pursuant  
21 to this subsection."

22 **SECTION 2.5.** G.S. 96-6 reads as rewritten:

23 **"§ 96-6. Unemployment Insurance Fund.**

24 (a) Establishment and Control. – There is hereby established as a special fund, separate  
25 and apart from all public moneys or funds of this State, an Unemployment Insurance Fund,  
26 which shall be administered by the ~~Commission~~ Division's Employment Insurance Section  
27 exclusively for the purposes of this Chapter. This fund shall consist of:

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

30 (2) Any property or securities acquired through the use of moneys belonging to  
31 the fund;

32 (3) All earnings of such property or securities;

33 (4) Any moneys received from the federal unemployment account in the  
34 unemployment trust fund in accordance with Title XII of the Social Security  
35 Act as amended;

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

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

41 (7) Reimbursement payments in lieu of contributions.

42 All moneys in the fund shall be commingled and undivided.

43 (b) Accounts and Deposit. – The State Treasurer shall be ex officio the treasurer and  
44 custodian of the fund who shall disburse such fund in accordance with the directions of the  
45 ~~Commission~~ Secretary and in accordance with such regulations as the ~~Commission~~ Division  
46 shall prescribe. ~~He~~ The Treasurer shall maintain within the fund three separate accounts:

47 (1) A clearing account,

48 (2) An unemployment trust fund account, and

49 (3) A benefit account.

50 All moneys payable to the fund, upon receipt thereof by the ~~Commission~~ Division, shall be  
51 forwarded immediately to the treasurer who shall immediately deposit them in the clearing

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

20 (c) Moneys shall be requisitioned from this State's account in the unemployment trust  
21 fund solely for the payment of benefits (including extended benefits) and in accordance with  
22 regulations prescribed by the ~~Commission-Secretary~~. The ~~Commission-Division~~ shall, from  
23 time to time, requisition from the unemployment trust fund such amounts, not exceeding the  
24 accounts standing to its account therein, as it deems necessary for the payment of benefits for a  
25 reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the  
26 benefit account and shall pay all warrants drawn thereon as provided in G.S. 143B-426.40G  
27 and requisitioned by the ~~Commission-Division~~ for the payment of benefits solely from such  
28 benefit account. Expenditures of such moneys in the benefit account and refunds from the  
29 clearing account shall not be subject to approval of the Budget Bureau or any provisions of law  
30 requiring specific appropriations or other formal release by State officers of money in their  
31 custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be  
32 issued as provided in G.S. 143B-426.40G as requisitioned by the ~~chairman of the Commission~~  
33 Secretary, the Assistant Secretary, or a duly authorized agent of the ~~Commission-Division~~ for  
34 that purpose. Any balance of moneys requisitioned from the unemployment trust fund which  
35 remains unclaimed or unpaid in the benefit account after the expiration of the period for which  
36 such sums were requisitioned shall either be deducted from estimates for, and may be utilized  
37 for the payment of, benefits during succeeding periods, or, in the discretion of the ~~Commission,~~  
38 Division, shall be redeposited with the Secretary of the Treasury of the United States of  
39 America, to the credit of this State's account in the unemployment trust fund, as provided in  
40 subsection (b) of this section.

41 (d) Management of Funds upon Discontinuance of Unemployment Trust Fund. – The  
42 provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment  
43 trust fund, shall be operative only so long as such unemployment trust fund continues to exist,  
44 and so long as the Secretary of the Treasury of the United States of America continues to  
45 maintain for this State a separate book account of all funds deposited therein by this State for  
46 benefit purposes, together with this State's proportionate share of the earnings of such  
47 unemployment trust fund, from which no other state is permitted to make withdrawals. If and  
48 when such unemployment trust fund ceases to exist, or such separate book account is no longer  
49 maintained, all moneys, properties, or securities therein belonging to the Unemployment  
50 Insurance Fund of this State shall be transferred to the treasurer of the Unemployment  
51 Insurance Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys,

1 properties, or securities in a manner approved by the ~~Commission~~, Secretary of the Department  
 2 of Commerce, in accordance with the provisions of this Chapter: Provided, that such moneys  
 3 shall be invested in the following readily marketable classes of securities: Bonds or other  
 4 interest-bearing obligations of the United States of America or such investments as are now  
 5 permitted by law for sinking funds of the State of North Carolina; and provided further, that  
 6 such investment shall at all times be so made that all the assets of the fund shall always be  
 7 readily convertible into cash when needed for the payment of benefits. The treasurer shall  
 8 dispose of securities or other properties belonging to the Unemployment Insurance Fund only  
 9 under the direction of the ~~Commission~~, Secretary of the Department of Commerce.

10 (e) Benefits shall be deemed to be due and payable under this Chapter only to the extent  
 11 provided in this Chapter and to the extent that moneys are available therefor to the credit of the  
 12 Unemployment Insurance Fund, and neither the State nor the ~~Commission~~ Division shall be  
 13 liable for any amount in excess of such sums.

14 (f) Any interest required to be paid on advances under Title XII of the Social Security  
 15 Act shall be paid in a timely manner and shall not be paid, directly or indirectly, from amounts  
 16 in the Unemployment Insurance Fund."

17 **SECTION 2.6.** G.S. 96-7(a) reads as rewritten:

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

21 **SECTION 2.7.(a)** G.S. 96-8(2) is repealed.

22 **SECTION 2.7.(b)** G.S. 96-8 is amended by adding the following new subdivisions

23 to read:

24 "**§ 96-8. Definitions.**

25 As used in this Chapter, unless the context clearly requires otherwise:

26 ...

27 (3a) Department. – The North Carolina Department of Commerce.

28 (3b) Division or DES. – The Department's Division of Employment Security.

29 (3c) EIS. – The Employment Insurance Section of DES.

30 (3d) ESS. – The Employment Security Section of DES.

31 ...

32 (8c) Secretary. – The Secretary of the Department of Commerce or the Assistant  
 33 Secretary in charge of the Division of Employment Security.

34 ...."

35 **SECTION 2.7.(c)** G.S. 96-8(5)a. and b. read as rewritten:

36 "(5) "Employer" means:

- 37 a. Any employing unit which (a) within the current or preceding  
 38 calendar year, and which for some portion of a day in each of 20  
 39 different calendar weeks within such calendar year (whether or not  
 40 such weeks are or were consecutive), has or had in employment one  
 41 or more individuals (not necessarily simultaneously and irrespective  
 42 of whether the same individuals are or were employed in each such  
 43 week); or (b) in any calendar quarter in either the current or  
 44 preceding calendar year paid for service in employment wages of one  
 45 thousand five hundred dollars (\$1,500) or more. Provided further, for  
 46 the purpose of this paragraph, "employment" shall include services  
 47 which would constitute "employment" but for the fact that such  
 48 services are deemed to be performed entirely within another state  
 49 pursuant to an election under an arrangement entered into by the  
 50 ~~Commission~~ Division pursuant to subsection (l) of G.S. 96-4, and an  
 51 agency charged with the administration of any other state or federal

1 employment security law. Provided further, for the purpose of this  
2 paragraph, "week" means a period of seven consecutive calendar  
3 days, and when a calendar week falls partly within each of two  
4 calendar years, the days of that week up to January 1 shall be deemed  
5 one calendar week, and the days beginning January 1, another such  
6 week.

7 b. Any employing unit which acquired the organization, trade or  
8 business, or substantially all the assets thereof, of another which at  
9 the time of such acquisition was an employer subject to this Chapter,  
10 or which acquired a part of the organization, trade, or business of  
11 another, which at the time of such acquisition was an employer  
12 subject to this Chapter; provided, such other would have been an  
13 employer under paragraph a of this subdivision if such part had  
14 constituted its entire organization, trade, or business; provided  
15 further, that G.S. 96-10, subsection (d), shall not be applicable to an  
16 individual or employing unit acquiring such part of the organization,  
17 trade or business. The provisions of G.S. 96-11(a) to the contrary  
18 notwithstanding, any employing unit which becomes an employer  
19 solely by virtue of the provisions of this paragraph shall not be liable  
20 for contributions based on wages paid or payable to individuals with  
21 respect to employment performed by such individuals for such  
22 employing unit prior to the date of acquisition of the organization,  
23 trade, business, or a part thereof as specified herein, or substantially  
24 all the assets of another, which at the time of such acquisition was an  
25 employer subject to this Chapter. This provision shall not be  
26 applicable with respect to any employing unit which is an employer  
27 by reason of any other provision of this Chapter. A successor by total  
28 acquisition under the provisions of this paragraph may be relieved  
29 from coverage hereunder by making written application with the  
30 ~~Commission~~ Division within 60 days from the date the ~~Commission~~  
31 Division mails him a notification of his liability and provided the  
32 ~~Commission~~ Division finds the predecessor was an employer at the  
33 time of such acquisition only because such predecessor had failed to  
34 make application for termination of coverage as provided in  
35 G.S. 96-11 of this Chapter. A successor under the provisions of this  
36 paragraph who becomes an employer by virtue of having acquired a  
37 part of the organization, trade or business of the predecessor  
38 hereunder may be relieved from coverage upon making written  
39 application with the ~~Commission~~ Division within 60 days from the  
40 date the ~~Commission~~ Division mails him a notification of his liability  
41 and the ~~Commission~~ Division finds that the predecessor could have  
42 terminated by making the application under G.S. 96-11 if the part  
43 acquired had constituted all of the predecessor's business."

44 **SECTION 2.7.(d)** G.S. 96-8(6)d., f.2., and k.3. read as rewritten:

45 "(6) d. Services not covered under paragraph b of this subdivision, and  
46 performed entirely without this State, with respect to no part of which  
47 contributions are required and paid under an employment security law of any  
48 other state or of the federal government, shall be deemed to be employment  
49 subject to this Chapter if the individual performing such service is a resident  
50 of this State and the ~~Commission~~ Division approves the election of the  
51 employing unit for whom such services are performed that the entire service



1 of such individual shall be deemed to be employment subject to this Chapter,  
 2 and services covered by an election duly approved by the ~~Commission~~  
 3 Division in accordance with an arrangement pursuant to subsection (l) of  
 4 G.S. 96-4 shall be deemed to be employment during the effective period of  
 5 such election.

6 ...  
 7 f. The term "employment" shall include:

8 ...  
 9 2. Services covered by an election duly approved by the  
 10 ~~Commission~~Division in accordance with an arrangement  
 11 pursuant to G.S. 96-4, subsection (l), of this Chapter during  
 12 the effective period of such election.

13 ...  
 14 k. The term "employment" does not include:

15 ...  
 16 3. Service with respect to which unemployment insurance is  
 17 payable under an employment security system established by  
 18 an act of Congress: Provided, that the ~~Commission~~Division  
 19 is hereby authorized and directed to enter into agreements  
 20 with the proper agencies under such act of Congress, which  
 21 agreements shall become effective 10 days after publication  
 22 thereof in the manner provided in G.S. 96-4(b) for general  
 23 rules, to provide potential rights to benefits under this  
 24 Chapter, acquired rights to unemployment insurance under  
 25 act of Congress, or who have, after acquiring potential rights  
 26 to unemployment insurance, under such act of Congress,  
 27 acquired rights to benefits under this Chapter.

28 ...."

29 **SECTION 2.7.(e)** G.S. 96-8(10) reads as rewritten:

30 "(10) **(Effective until July 1, 2011)** Total and partial unemployment.

31 a. For the purpose of establishing a benefit year, an individual shall be  
 32 deemed to be unemployed:

33 1. If the individual has payroll attachment but, because of lack  
 34 of work during the payroll week for which the individual is  
 35 requesting the establishment of a benefit year, the individual  
 36 worked less than the equivalent of three customary scheduled  
 37 full-time days in the establishment, plant, or industry in  
 38 which the individual has payroll attachment as a regular  
 39 employee. If a benefit year is established, it shall begin on the  
 40 Sunday preceding the payroll week ending date.

41 2. If the individual has no payroll attachment on the date the  
 42 individual reports to apply for unemployment insurance. If a  
 43 benefit year is established, it shall begin on the Sunday of the  
 44 calendar week with respect to which the claimant met the  
 45 reporting requirements provided by ~~Commission~~  
 46 regulation rules adopted by the Division.

47 b. For benefit weeks within an established benefit year, a claimant shall  
 48 be deemed to be:

49 1. Totally unemployed, irrespective of job attachment, if a  
 50 claimant's earnings for such week, including payments  
 51 defined in subparagraph c below, would not reduce the

- 1 claimant's weekly benefit amount as prescribed by  
2 G.S. 96-12(c).
- 3 2. Partially unemployed, if the claimant has payroll attachment  
4 but because of lack of work during the payroll week for  
5 which the claimant is requesting benefits the claimant worked  
6 less than three customary scheduled full-time days in the  
7 establishment, plant, or industry in which the claimant is  
8 employed and whose earnings from such employment  
9 (including payments defined in subparagraph c below) would  
10 qualify the claimant for a reduced payment as prescribed by  
11 G.S. 96-12(c).
- 12 3. Part-totally unemployed, if the claimant had no job  
13 attachment during all or part of such week and whose  
14 earnings for odd jobs or subsidiary work (including payments  
15 defined in subparagraph c below) would qualify the claimant  
16 for a reduced payment as prescribed by G.S. 96-12(c).
- 17 c. (For suspension of enforcement, see note) No individual shall be  
18 considered unemployed if, with respect to the entire calendar week,  
19 the individual is receiving, has received, or will receive as a result of  
20 the individual's separation from employment, remuneration in the  
21 form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii)  
22 terminal leave pay, (iv) separation pay, or (v) dismissal payments or  
23 wages by whatever name. Provided, however, if such payment is  
24 applicable to less than the entire week, the claimant may be  
25 considered to be unemployed as defined in subsections a and b of this  
26 paragraph. Sums received by any individual for services performed  
27 as an elected official who holds an elective office, as defined in  
28 G.S. 128-1.1(d), or as a member of the N. C. National Guard, as  
29 defined in G.S. 127A-3, or as a member of any reserve component of  
30 the United States Armed Forces shall not be considered in  
31 determining that individual's employment status under this  
32 subsection. Benefits paid under this subdivision shall not be charged  
33 to the account or accounts of the base period employer or employers.
- 34 d. An individual's week of unemployment shall be deemed to  
35 commence only after ~~his~~the individual's registration at an  
36 employment office, except as the ~~Commission may by regulation~~  
37 Division by rule may otherwise prescribe.
- 38 e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009,  
39 and applicable to claims filed on or after that date.
- 40 f. No substitute teacher or other substitute school personnel shall be  
41 considered unemployed for days or weeks when not called to work  
42 unless the individual is or was employed as a full-time substitute  
43 during the period of time for which the individual is requesting  
44 benefits. For the purposes of this subsection, full-time substitute is  
45 defined as a substitute employee who works more than 30 hours a  
46 week on a continual basis for a period of six months or more.
- 47 (10) **(Effective July 1, 2011)** Total and partial unemployment.
- 48 a. For the purpose of establishing a benefit year, an individual shall be  
49 deemed to be unemployed:
- 50 1. If he has payroll attachment but, because of lack of work  
51 during the payroll week for which he is requesting the

- 1 establishment of a benefit year, he worked less than the  
2 equivalent of three customary scheduled full-time days in the  
3 establishment, plant, or industry in which he has payroll  
4 attachment as a regular employee. If a benefit year is  
5 established, it shall begin on the Sunday preceding the payroll  
6 week ending date.
- 7 2. If he has no payroll attachment on the date he reports to apply  
8 for unemployment insurance. If a benefit year is established,  
9 it shall begin on the Sunday of the calendar week with respect  
10 to which the claimant met the reporting requirements  
11 provided by ~~Commission regulation rules~~ adopted by the  
12 Division.
- 13 b. For benefit weeks within an established benefit year, a claimant shall  
14 be deemed to be:
- 15 1. Totally unemployed, irrespective of job attachment, if his  
16 earnings for such week, including payments defined in  
17 subparagraph c below, would not reduce his weekly benefit  
18 amount as prescribed by G.S. 96-12(c).
- 19 2. Partially unemployed, if he has payroll attachment but  
20 because of lack of work during the payroll week for which he  
21 is requesting benefits he worked less than three customary  
22 scheduled full-time days in the establishment, plant, or  
23 industry in which he is employed and whose earnings from  
24 such employment (including payments defined in  
25 subparagraph c below) would qualify him for a reduced  
26 payment as prescribed by G.S. 96-12(c).
- 27 3. Part-totally unemployed, if the claimant had no job  
28 attachment during all or part of such week and whose  
29 earnings for odd jobs or subsidiary work (including payments  
30 defined in subparagraph c below) would qualify him for a  
31 reduced payment as prescribed by G.S. 96-12(c).
- 32 c. No individual shall be considered unemployed if, with respect to the  
33 entire calendar week, he is receiving, has received, or will receive as  
34 a result of his separation from employment, remuneration in the form  
35 of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal  
36 leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal  
37 payments or wages by whatever name. Provided, however, if such  
38 payment is applicable to less than the entire week, the claimant may  
39 be considered to be unemployed as defined in subsections a and b of  
40 this paragraph. Sums received by any individual for services  
41 performed as an elected official who holds an elective office, as  
42 defined in G.S. 128-1.1(d), or as a member of the N. C. National  
43 Guard, as defined in G.S. 127A-3, or as a member of any reserve  
44 component of the United States Armed Forces shall not be  
45 considered in determining that individual's employment status under  
46 this subsection. Provided further, however, that an individual shall be  
47 considered to be unemployed as to receipt of severance pay for any  
48 week the individual is registered at or attending any institution of  
49 higher education as defined in G.S. 96-8(5)j., or secondary school as  
50 defined in G.S. 96-8(5)q., or ~~Commission~~ Division approved

1 vocational, educational, or training programs as defined in  
2 G.S. 96-13.

3 d. An individual's week of unemployment shall be deemed to  
4 commence only after his registration at an employment office, except  
5 as the ~~Commission~~ Division may by ~~regulation~~ rule otherwise  
6 prescribe.

7 e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009,  
8 and applicable to claims filed on or after that date.

9 f. No substitute teacher or other substitute school personnel shall be  
10 considered unemployed for days or weeks when not called to work  
11 unless the individual is or was employed as a full-time substitute  
12 during the period of time for which the individual is requesting  
13 benefits. For the purposes of this subsection, full-time substitute is  
14 defined as a substitute employee who works more than 30 hours a  
15 week on a continual basis for a period of six months or more."

16 **SECTION 2.7.(f)** G.S. 96-8(13)a. and d. read as rewritten:

17 "(13) a. "Wages" shall include commissions, bonuses, any sums paid to an  
18 employee by an employer pursuant to an order of any court, the National Labor Relations  
19 Board, or any other lawfully constituted adjudicative agency or by private agreement, consent,  
20 or arbitration for loss of pay by reason of discharge, and the cash value of all remuneration in  
21 any medium other than cash. The reasonable cash value of remuneration in any medium other  
22 than cash shall be estimated and determined in accordance with rules prescribed by the  
23 ~~Commission; Division;~~ provided, if the remuneration of an individual is not based upon a fixed  
24 period or duration of time or if the individual's wages are paid at irregular intervals or in such  
25 manner as not to extend regularly over the period of employment, the wages for any week or  
26 for any calendar quarter for the purpose of computing an individual's right to unemployment  
27 benefits only shall be determined in such manner as may by authorized regulations be  
28 prescribed. The regulations shall, so far as possible, secure results reasonably similar to those  
29 that would prevail if the individual were paid his wages at regular intervals. The term "wages"  
30 shall not include the amount of any payment with respect to services to, or on behalf of, an  
31 individual in its employ under a plan or system established by an employing unit which makes  
32 provision for individuals in its employ generally or for a class or classes of such individuals  
33 (including any amount paid by an employing unit for insurance or annuities, or into a fund, to  
34 provide for any such payment), on account of (i) retirement, or (ii) sickness or accident  
35 disability, or (iii) medical and hospitalization expenses in connection with sickness or accident  
36 disability or (iv) death. However, in the case of payments made to an employee or any of his  
37 dependents on account of sickness or accident disability, only payments which are received  
38 under a worker's compensation law shall be excluded from the term "wages". Furthermore, the  
39 term "wages" shall not include payment by an employer without deduction from the  
40 remuneration of the employee of the tax imposed upon an employee under the Federal  
41 Insurance Contributions Act.

42 ...

43 d. Wages shall not include the amount of any payment, including any  
44 amount paid into a fund to provide for such payment, made to, or on  
45 behalf of, an employee under a plan or system established by an  
46 employer or others which makes provision for employees generally,  
47 or for a class or group of employees, for the purpose of  
48 supplementing unemployment benefits, provided that the plan has  
49 been approved by the ~~Commission~~ Division under such reasonable  
50 ~~regulations~~ rules as it shall ~~promulgate~~ adopt."

51 **SECTION 2.7.(g)** G.S.96-8(22) and (24) read as rewritten:

1           "(22) Average Weekly Insured Wage. – "Average weekly insured wage" is the  
2 quotient obtained by dividing the total of the wages, as defined in G.S. 96-8(12) and (13),  
3 reported by all insured employers by the monthly average in insured employment under this  
4 Chapter during the immediately preceding calendar year and further dividing the quotient  
5 obtained by 52 to obtain a weekly rate. (For this computation the data as released annually in  
6 the ~~Employment Security Commission's Division's~~ publication "North Carolina Insured  
7 Employment and Wage Payment" shall be used). The quotient thus obtained shall be deemed to  
8 be the average weekly wage for such year.

9           ...  
10           (24) Work, for purposes of this Chapter, means any bona fide permanent  
11 employment the acceptance of which would not result in an undue family hardship as defined  
12 in G.S. 96-8(10a). For purposes of this definition, "bona fide permanent employment" is  
13 presumed to include only those employments of greater than 30 consecutive calendar days  
14 duration (regardless of whether work is performed on all those days) provided: (a) the  
15 presumption that an employment lasting 30 days or less is not bona fide permanent  
16 employment may be rebutted by a finding by the ~~Commission, Division,~~ either on its own  
17 motion or upon a clear and convincing showing by an interested party that the application of  
18 the presumption would work a substantial injustice in view of the intent of this Chapter; (b)  
19 Any decision of the ~~Commission-Division~~ on the question of bona fide employment may be  
20 disturbed on judicial review only upon a finding of plain error."

21           **SECTION 2.8.** G.S. 96-9 reads as rewritten:

22   "**§ 96-9. Contributions.**

23       (a)    Payment. –

24           (1)   Except as provided in subsection (d) hereof, contributions shall accrue and  
25 become payable by each employer for each calendar year in which he is  
26 subject to this Chapter, with respect to wages for employment (as defined in  
27 G.S. 96-8(6)). Such contributions shall become due and be paid by each  
28 employer to the ~~Commission-Division~~ for the fund in accordance with such  
29 regulations as the ~~Commission-Division~~ may prescribe, and shall not be  
30 deducted in whole or in part from the remuneration of individuals in his  
31 employ. Contributions shall become due on and shall be paid on or before  
32 the last day of the month following the close of the calendar quarter in which  
33 such wages are paid and such contributions shall be paid by each employer  
34 to the ~~Commission-Division~~ for the fund in accordance with such regulations  
35 as the ~~Commission-Division~~ may prescribe, and shall not be deducted in  
36 whole or in part from the remuneration of individuals in his employ,  
37 provided, further, that if the ~~Commission-Division~~ shall be advised by its  
38 duly authorized officers or agents that the collection of any contribution  
39 under any provision of this Chapter will be jeopardized by delay, the  
40 ~~Commission-Division~~ may, whether or not the time otherwise prescribed by  
41 law for making returns and paying such tax has expired, immediately assess  
42 such contributions (together with all interest and penalties, the assessment of  
43 which is provided for by law). Such contributions, penalties and interest  
44 shall thereupon become immediately due and payable, and immediate notice  
45 and demand shall be made by the ~~Commission-Division~~ for the payment  
46 thereof. Upon failure or refusal to pay such contributions, penalties, and  
47 interest, it shall be lawful to make collection thereof as provided by  
48 G.S. 96-10 and subsections thereunder and such collection shall be lawful  
49 without regard to the due date of contributions herein prescribed, provided,  
50 further, that nothing in this paragraph shall be construed as permitting any

- 1 refund of contributions heretofore paid under the law and regulations in  
2 effect at the time such contributions were paid.  
3 ...
- 4 (3) Benefits paid employees of this State shall be financed and administered in  
5 accordance with the provisions and conditions of G.S. 96-9(d) required for  
6 nonprofit organizations; except as provided by suitable regulations which  
7 may be adopted by the ~~Commission~~-Division. The Department of  
8 Administration shall make an election with respect to financing all such  
9 benefits.
- 10 ...
- 11 (6) If the amount of the contributions shown to be due after all credits is less  
12 than five dollars (\$5.00), no payment need be made. If an employer has paid  
13 contributions, penalties, and/or interest in excess of the amount due, this  
14 shall be considered an overpayment and refunded provided no other debts  
15 are owed to the ~~Commission~~-Division by the employer. Overpayments of  
16 less than five dollars (\$5.00) shall be refunded only upon receipt by the  
17 Chairman of a written demand for such refund from the employer. Nothing  
18 herein shall be construed to change or extend the limitation set forth in  
19 G.S. 96-10(e), (f), and (i).
- 20 (7) Effective with the quarter ending September 30, 1999, every employer with  
21 100 or more employees, and every person or organization that, as agent,  
22 reports wages on a total of 100 or more employees on behalf of one or more  
23 subject employers, shall file that portion of the "Employer's Quarterly Tax  
24 and Wage Report" that contains the name, social security number, and gross  
25 wages of each individual in employment on magnetic tapes or diskettes in a  
26 format prescribed by the ~~Commission~~-Division.
- 27 For failure of an employer to comply with this subdivision, there shall be  
28 added to the amount required to be shown as tax in the reports a penalty of  
29 twenty-five dollars (\$25.00). For failure of an agent to comply with this  
30 subdivision, the ~~Commission~~-Division may deny the agent the right to report  
31 wages and file reports for the employer for whom the agent filed an  
32 improper report for a period of one year following the calendar quarter in  
33 which that agent filed the improper report. The ~~Commission~~-Division may  
34 reduce or waive a penalty for good cause shown.
- 35 (8) An employer of domestic service employees as defined by the Internal  
36 Revenue Code may be given permission by the ~~Chair of the Commission~~  
37 Secretary to file reports once a year on or before the last day of the month  
38 following the close of the calendar year in which the wages are paid.  
39 Permission to file a report annually may be revoked if the employer is found  
40 liable to the ~~Commission~~-Division for quarterly contributions under  
41 subdivision (6) of this subsection.
- 42 (9) Employers who are granted permission under subdivision (8) of this  
43 subsection to file annual reports may be given permission to file reports by  
44 telephone. Employers who report by telephone must contact either the Field  
45 Tax Auditor who is assigned to the employer's account or the  
46 ~~Unemployment Insurance Division~~-Employment Insurance Section in  
47 Raleigh and report the required information to that Auditor or to the Division  
48 by the date the report is due under subdivision (8) of this subsection.
- 49 (10) Employers electing to do so may pay their quarterly tax contributions by  
50 electronic funds transfer. When an electronic funds transfer cannot be  
51 completed due to insufficient funds or the nonexistence of an account of the

1 transferor, the ~~Commission~~-Division shall assess a penalty equal to ten  
2 percent (10%) of the amount of the transfer, subject to a minimum of one  
3 dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). The  
4 ~~Commission~~-Division may waive this penalty for good cause shown. As  
5 used in this section, the term "electronic funds transfer" means a transfer of  
6 funds initiated by using an electronic terminal, a telephone, a computer, or  
7 magnetic tape to instruct or authorize a financial institution or its agent to  
8 credit or debit an account.

9 (11) The ~~Commission~~-Division may establish policies to allow taxes to be  
10 payable under certain conditions by credit card. A condition of payment by  
11 credit card is receipt by the ~~Commission~~-Division of the full amount of  
12 taxes, penalties, and interest due. The ~~Commission~~-Division shall require an  
13 employer who pays by credit card to include an amount equal to any fee  
14 charged the ~~Commission~~-Division for the use of the card. A payment of  
15 taxes that is made by credit card and is not honored by the card issuer does  
16 not relieve the employer of the obligation to pay the taxes.

17 (b) Rate of Contributions. –

18 ...

19 (2) Experience Rating. –

20 ...

21 b. Credit Ratio. – The ~~Commission~~-Division shall, for each year,  
22 compute a credit reserve ratio for each employer whose account has a  
23 credit balance. An employer's credit reserve ratio shall be the  
24 quotient obtained by dividing the credit balance of the employer's  
25 account as of July 31 of each year by the total taxable payroll of the  
26 employer for the 36 calendar-month period ending June 30 preceding  
27 the computation date. Credit balance as used in this section means  
28 the total of all contributions paid and credited for all past periods in  
29 accordance with the provisions of G.S. 96-9(c)(1) together with all  
30 other lawful credits to the account of the employer less the total  
31 benefits charged to the account of the employer for all past periods.

32 c. Debit Ratio. – The ~~Commission~~-Division shall for each year compute  
33 a debit ratio for each employer whose account shows that the total of  
34 all its contributions paid and credited for all past periods in  
35 accordance with G.S. 96-9(c)(1) together with all other lawful credits  
36 is less than the total benefits charged to its account for all past  
37 periods. An employer's debit ratio shall be the quotient obtained by  
38 dividing the debit balance of the employer's account as of July 31 of  
39 each year by the total taxable payroll of the employer for the 36  
40 calendar-month period ending June 30 preceding the computation  
41 date. The amount arrived at by subtracting the total amount of all  
42 contributions paid and credited for all past periods in accordance  
43 with the provisions of G.S. 96-9(c)(1) together with all other lawful  
44 credits of the employer from the total amount of all benefits charged  
45 to the account of the employer for such periods is the employer's  
46 debit balance.

47 d. Other Provisions. – No employer's contribution rate shall be reduced  
48 below the standard rate for any calendar year unless its liability  
49 extends over a period of all or part of two consecutive calendar years  
50 and, as of August 1 of the second year, its credit reserve ratio meets  
51 the requirements of that schedule used in computing rates for the

1 following calendar year, unless the employer's liability was  
2 established under G.S. 96-8(5)b and its predecessor's account was  
3 transferred as provided by G.S. 96-9(c)(4)a.

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

30 (3) ...  
31 d3.

32 The standard contribution rate set by subdivision (b)(1) of this  
33 section applies to an employer unless the employer's account has a  
34 credit balance. Beginning January 1, 1999, for any calendar year that  
35 the training and reemployment contribution in G.S. 96-6.1 does not  
36 apply, the contribution rate of an employer whose account has a  
37 credit balance is determined in accordance with the rate set in the  
38 following Experience Rating Formula table for the applicable rate  
39 schedule. The contribution rate of an employer whose contribution  
40 rate is determined by this Experience Rating Formula table shall be  
41 reduced by fifty percent (50%) for any year in which the balance in  
42 the Unemployment Insurance Fund on computation date equals or  
43 exceeds one and ninety-five hundredths percent (1.95%) of the gross  
44 taxable wages reported to the ~~Commission-Division~~ in the previous  
45 calendar year, and the fund ratio determined on that date is less than  
46 five percent (5%) and shall be reduced by sixty percent (60%) for  
47 any year in which the balance in the Unemployment Insurance Fund  
48 on computation date equals or exceeds one and ninety-five  
49 hundredths percent (1.95%) of the gross taxable wages as reported to  
50 the ~~Commission-Division~~ in the previous calendar year, and the fund  
51 ratio determined on that date is five percent (5%) or more.



EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As But  
 Much Less  
 As Than

Rate Schedules (%)

	A	B	C	D	E	F	G	H	I		
9	0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
10	0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
11	0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
12	0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
13	0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
14	1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
15	1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
16	1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
17	1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
18	1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
19	2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
20	2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
21	2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
22	2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
23	2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
24	3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
25	3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
26	3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
27	3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
28	3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
29	4.0%										
30	&										
31	OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

d5.

The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission~~ Division in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to

the ~~Commission~~-Division in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As But  
 Much Less  
 As Than

Rate Schedules (%)

	A	B	C	D	E	F	G	H	I	
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0%										
&										
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

...

g. Any employer may at any time make a voluntary contribution, additional to the contributions required under this Chapter, to the fund to be credited to its account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as this term is used in G.S. 96-8(8). Any voluntary contributions so made by an employer within 30 days after the date of mailing by the ~~Commission~~-Division pursuant to G.S. 96-9(c)(3) of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to its account as of the previous July 31. If, however, the voluntary contribution is made after July 31 of any year it shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9(b)(3) until the following July 31. The ~~Commission~~-Division in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of the voluntary contribution by the employer.

1 h. If, within the calendar month in which the computation date occurs,  
2 the ~~Commission~~-Division finds that any employing unit has failed to  
3 file any report required in connection therewith or has filed a report  
4 which the ~~Commission~~-Division finds incorrect or insufficient, the  
5 ~~Commission~~-Division shall make an estimate of the information  
6 required from such employing unit on the basis of the best evidence  
7 reasonably available to it at the time and shall notify the employing  
8 unit thereof by registered mail addressed to its last known address.  
9 Unless such employing unit shall file the report or a corrected or  
10 sufficient report, as the case may be, within 15 days after the mailing  
11 of such notice, the ~~Commission~~-Division shall compute such  
12 employing unit's rate of contributions on the basis of such estimates,  
13 and the rate as so determined shall be subject to increases but not to  
14 reduction, on the basis of subsequently ascertained information.

15 i. Repealed by Session Laws 1987, c. 17, s. 5.

16 j. A tax is imposed upon contributions at the rate of twenty percent  
17 (20%) of the amount of contributions due. The tax is due and payable  
18 at the time and in the same manner as the contributions. The tax does  
19 not apply in a calendar year if, as of August 1 of the preceding year,  
20 either of the following conditions was met; (i) the amount in the  
21 Reserve Fund equals or exceeds one hundred sixty-three million  
22 three hundred forty-nine thousand dollars (\$163,349,000), which is  
23 one percent (1%) of taxable wages for calendar year 1984; or (ii) the  
24 balance in the Unemployment Insurance Fund established by  
25 G.S. 96-6(a) is five hundred million (\$500,000,000) or less. The  
26 collection of this tax, the assessment of interest and penalties on  
27 unpaid taxes, the filing of judgment liens, and the enforcement of the  
28 liens for unpaid taxes is governed by the provisions of G.S. 96-10  
29 where applicable. Taxes collected under this subpart shall be credited  
30 to the Employment Security ~~Commission~~-Reserve Fund, and refunds  
31 of the taxes shall be paid from the same Fund. The clear proceeds of  
32 any civil penalties collected under this subpart shall be remitted to  
33 the Civil Penalty and Forfeiture Fund in accordance with  
34 G.S. 115C-457.2. Any interest collected on unpaid taxes shall be  
35 credited to the Special Employment Security Administration Fund,  
36 and any interest refunded on taxes imposed by this subpart shall be  
37 paid from the same Fund.

38 (c) (1) Except as provided in subsection (d) of this section, the ~~Commission~~  
39 Division shall maintain a separate account for each employer and  
40 shall credit his account with all voluntary contributions made by him  
41 and all other contributions which he has paid or is paid on his behalf,  
42 provided the ~~Commission~~-Division shall credit the account of each  
43 employer in an amount equal to eighty percent (80%) of all voluntary  
44 contributions paid with respect to periods prior to January 1, 1984,  
45 and of all other contributions paid with respect to periods between  
46 July 1, 1965, and December 31, 1983. On the computation date,  
47 beginning first with August 1, 1948, the ratio of the credit balance in  
48 each individual account to the total of all the credit balances in all  
49 employer accounts shall be computed as of such computation date,  
50 and an amount equal to the interest credited to this State's account in  
51 the unemployment trust fund in the treasury of the United States for

1 the four most recently completed calendar quarters shall be credited  
2 prior to the next computation date on a pro rata basis to all  
3 employers' accounts having a credit balance on the computation date.  
4 Such amount shall be prorated to the individual accounts in the same  
5 ratio that the credit balance in each individual account bears to the  
6 total of the credit balances in all such accounts. In computing the  
7 amount to be credited to the account of an employer as a result of  
8 interest earned by funds on deposit in the unemployment trust fund in  
9 the treasury of the United States to the account of this State, any  
10 voluntary contributions made by an employer after July 31 of any  
11 year shall not be considered a part of the account balance of the  
12 employer until the next computation date occurring after such  
13 voluntary contribution was made. No provision in this section shall  
14 in any way be subject to or affected by any provisions of the  
15 Executive Budget Act, as amended. Nothing in this Act shall be  
16 construed to grant any employer or individual in his service prior  
17 claims or rights to the amount paid by him into the fund either on his  
18 own behalf or on behalf of such individuals.

19 (2) Charging of benefit payments. –

- 20 ...
- 21 b. Any benefits paid to any claimant under a claim filed for a period  
22 occurring after the date of such separations as are set forth in this  
23 paragraph and based on wages paid prior to the date of (i) the leaving  
24 of work by the claimant without good cause attributable to the  
25 employer; (ii) the discharge of claimant for misconduct in connection  
26 with his work; (iii) the discharge of the claimant for substantial fault  
27 as that term may be defined in G.S. 96-14; (iv) the discharge of the  
28 claimant solely for a bona fide inability to do the work for which he  
29 was hired but only where the claimant's period of employment was  
30 100 days or less; (v) separations made disqualifying under  
31 G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability  
32 or health condition; or (vii) separation of claimant solely as the result  
33 of an undue family hardship shall not be charged to the account of an  
34 employer by whom the claimant was employed at the time of such  
35 separation; provided, however, said employer promptly furnishes the  
36 ~~Commission~~ Division with such notices regarding any separation of  
37 the individual from work as are or may be required by the regulations  
38 of the ~~Commission~~ Division.

39 No benefit charges shall be made to the account of any employer  
40 who has furnished work to an individual who, because of the loss of  
41 employment with one or more other employers, becomes eligible for  
42 partial benefits while still being furnished work by such employer on  
43 substantially the same basis and substantially the same amount as had  
44 been made available to such individual during his base period  
45 whether the employments were simultaneous or successive;  
46 provided, that such employer makes a written request for  
47 noncharging of benefits in accordance with ~~Commission~~ Division  
48 regulations and procedures.

49 No benefit charges shall be made to the account of any employer  
50 for benefit years ending on or before June 30, 1992, where benefits  
51 were paid as a result of a discharge due directly to the reemployment

1 of a veteran mandated by the Veteran's Reemployment Rights Law,  
2 38 USCA § 2021, et seq.

3 No benefit charges shall be made to the account of any employer  
4 where benefits are paid as a result of a decision by ~~an Adjudicator,~~  
5 ~~Appeals Referee or the Commission~~ the Division if such decision to  
6 pay benefits is ultimately reversed; nor shall any such benefits paid  
7 be deemed to constitute an overpayment under G.S. 96-18(g)(2), the  
8 provisions thereof notwithstanding. Provided, an overpayment of  
9 benefits paid shall be established in order to provide for the waiting  
10 period required by G.S. 96-13(c).

- 11 ...
- 12 (3) As of July 31 of each year, and prior to January 1 of the succeeding year, the  
13 ~~Commission~~ Division shall determine the balance of each employer's  
14 account and shall furnish him with a statement of all charges and credits  
15 thereto. At the same time the ~~Commission~~ Division shall notify each  
16 employer of his rate of contributions as determined for the succeeding  
17 calendar year pursuant to this section. Such determination shall become final  
18 unless the employer files an application for review or redetermination prior  
19 to May 1 following the effective date of such rates. The ~~Commission~~  
20 Division may redetermine on its own motion within the same period of time.

- 21 (4) Transfer of account. –

22 a. ...

23 2. Consent. – When an employer, as defined in G.S. 96-8(5)b.,  
24 in any manner acquires a distinct and severable portion of the  
25 organization, trade, or business of another employing unit, the  
26 part of the account of the predecessor that relates to the  
27 acquired portion of the business shall, upon the mutual  
28 consent of the parties concerned and approval of the  
29 ~~Commission~~ Division in conformity with the regulations as  
30 prescribed therefor, be transferred as of the date of acquisition  
31 to the successor employer for use in the determination of the  
32 successor's rate of contributions, provided application for  
33 transfer is made within 60 days after the ~~Commission~~  
34 Division notifies the successor of the right to request such  
35 transfer, otherwise the effective date of the transfer shall be  
36 the first day of the calendar quarter in which such application  
37 is filed, and that after the transfer the successor employing  
38 unit continues to operate the transferred portion of such  
39 organization, trade or business. On or after January 1, 2006,  
40 whenever part of an organization, trade, or business is  
41 transferred between entities subject to substantially common  
42 ownership, management, or control, the tax account shall be  
43 transferred in accordance with regulations. However,  
44 employing units transferring entities with any common  
45 ownership, management, or control are not entitled to  
46 separate and distinct employer status under this Chapter.  
47 Provided, however, that the transfer of an account for the  
48 purpose of computation of rates shall be deemed to have been  
49 made prior to the computation date falling within the calendar  
50 year within which the effective date of such transfer occurs  
51 and the account shall thereafter be used in the computation of

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the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the ~~Commission~~-Division of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

...

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

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

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

...

1 (6) If the ~~Commission~~-Division finds that an employer's business is closed  
2 solely because of the entrance of one or more of the owners, officers,  
3 partners, or the majority stockholder into the Armed Forces of the United  
4 States, or of any of its allies, or of the United Nations, such employer's  
5 experience rating account shall not be terminated; and, if the business is  
6 resumed within two years after the discharge or release from active duty in  
7 the Armed Forces of such person or persons, the employer's account shall be  
8 deemed to have been chargeable with benefits throughout more than 13  
9 consecutive calendar months ending July 31 immediately preceding the  
10 computation date. This subdivision shall apply only to employers who are  
11 liable for contributions under the experience rating system of financing  
12 unemployment benefits. This subdivision shall not be construed to apply to  
13 employers who are liable for payments in lieu of contributions or to  
14 employers using the reimbursable method of financing benefit payments.

15 (d) Benefits paid to employees of nonprofit organizations shall be financed in  
16 accordance with the provisions of this paragraph. For the purposes of this paragraph, a  
17 nonprofit organization is an organization (or group of organizations) described in section  
18 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of  
19 the Internal Revenue Code.

20 (1) a. Any nonprofit organization which becomes subject to this  
21 Chapter on or after January 1, 1972, shall pay contributions under the  
22 provisions of this Chapter, unless it elects in accordance with this  
23 paragraph to pay the ~~Commission~~-Division for the Unemployment  
24 Insurance Fund an amount equal to the amount of regular benefits  
25 and of one half of the extended benefits paid, that is attributable to  
26 service in the employ of such nonprofit organization, to individuals  
27 for weeks of unemployment which begin within a benefit year  
28 established during the effective period of such election.

29 b. Any nonprofit organization which is or becomes subject to this  
30 Chapter on or after January 1, 1972, may elect to become liable for  
31 payments in lieu of contributions for a period of not less than four  
32 calendar years beginning with the date on which subjectivity begins  
33 by filing a written notice of its election with the ~~Commission~~  
34 Division not later than 30 days immediately following the date of  
35 written notification of the determination of such subjectivity.  
36 Provided if notification is not by registered mail, the election may be  
37 made on or after January 1, 1972, within six months following the  
38 date of the written notification of the determination of such  
39 subjectivity. If such election is not made as set forth herein, no  
40 election can be made until after four calendar years have elapsed  
41 under the contributions method of payment.

42 c. Any nonprofit organization which makes an election in accordance  
43 with subparagraph b of this paragraph will continue after such four  
44 calendar years to be liable for payments in lieu of contributions until  
45 it files with the ~~Commission~~-Division a written notice terminating its  
46 election not later than 30 days prior to the next January 1, effective  
47 on such January 1. Provided, however, no employer granted or in  
48 reimbursement status will be allowed refund of any previous  
49 balances used in a transfer to reimbursement status.

50 d. Any nonprofit organization which has been paying contributions  
51 under this Chapter for a period of at least four consecutive calendar

1 years subsequent to January 1, 1972, may elect to change to a  
2 reimbursement basis by filing with the ~~Commission~~-Division not  
3 later than 30 days prior to the next January 1 a written notice of  
4 election to become liable for payments in lieu of contributions,  
5 effective on such January 1. Such election shall not be terminable for  
6 a period of four calendar years. In the event of such an election, the  
7 account of such employer shall be closed and shall not be used in any  
8 future computation of such employer's contribution rate in any  
9 manner whatsoever.

10 d1. Any nonprofit organization which makes an election in accordance  
11 with subparagraph b. of this paragraph must secure such election by  
12 making a payment in lieu of contributions as provided in subdivision  
13 (2) of this subsection, posting a surety bond from an insurance  
14 company duly licensed to conduct business in this State, or obtaining  
15 an irrevocable letter of credit with the ~~Commission~~-Division to insure  
16 the payments in lieu of contributions as provided in subdivision (2)  
17 of this subsection. Any surety bond posted under this paragraph shall  
18 be in force for a period of not less than two calendar years and shall  
19 be renewed with the approval of the ~~Commission~~-Division. The  
20 ~~Commission~~-Division may adopt rules to implement the provisions  
21 of this subparagraph.

22 e. The ~~Commission~~-Division, in accordance with such regulations as it  
23 may adopt, shall notify each nonprofit organization of any  
24 determination which it may make of its status as an employer and of  
25 the effective date of any election which it makes and of any  
26 termination of such election. Such determinations shall be subject to  
27 reconsideration, appeal and review.

28 (2) Payments in lieu of contributions shall be made in accordance with the  
29 provisions of this subparagraph and shall be processed as provided herein.

30 a. Quarterly contributions and wage reports and advance payments shall  
31 be submitted to the ~~Commission~~-Division quarterly under the same  
32 conditions and requirements of G.S. 96-9 and 96-10, except that the  
33 amount of advance payments shall be computed as one percent (1%)  
34 of taxable wages and entered on such reports; provided that such  
35 advance payments shall become effective only with respect to the  
36 first four thousand two hundred dollars (\$4,200) in wages paid in a  
37 calendar year until January 1, 1978. On and after that date advance  
38 payments shall be effective with respect to the federally required  
39 wage base provided that after December 31, 1983, the wage base  
40 shall be the same as that provided for in G.S. 96-9(a)(5). Collection  
41 of such advance payments shall be made as provided for the  
42 collection of contributions in G.S. 96-10.

43 Beginning January 1, 1978, any employer making quarterly  
44 reports of employment to the ~~Commission~~-Division and if such  
45 employer is a newly electing reimbursement employer he shall pay  
46 contributions of one percent (1%) of taxable wages entered on such  
47 reports.

48 Any employer paying by reimbursement having been, prior to  
49 July 1, under the reimbursement method of payment for the  
50 preceding calendar year, shall continue to file quarterly reports but  
51 shall make no payments with those reports.



1           b.     The ~~Commission-Division~~ shall establish a separate account for each  
2           such employer and such account shall be credited, and maintained as  
3           provided in G.S. 96-9(c)(1), except that advance payments shall be  
4           credited in full and voluntary contributions are not applicable.

5           ...  
6           d.     As of July 31 of each year, and prior to January 1 of the succeeding  
7           year, the ~~Commission-Division~~ shall determine the balance of each  
8           such employer's account and shall furnish him with a statement of all  
9           charges and credits thereto.

10           Should the balance in such account not equal that requiring a  
11           refund, the employer shall upon notice and demand for payment  
12           mailed to his last known address pay into his account an amount that  
13           will bring such balance to the minimum required for a refund. Such  
14           amount shall become due on or before the tenth day following the  
15           mailing of such notice and demand for payment. Any such amount  
16           unpaid on the due date shall be collected in the same manner,  
17           including interest, as prescribed in G.S. 96-10.

18           Should there be a debit balance in such account, the employer  
19           shall, upon notice and demand for payment, mailed to his last-known  
20           address, pay into his account an amount equal to such debit balance.  
21           Such amount shall become due on or before the tenth day following  
22           the mailing of such notice and demand for payment.

23           Any such amount unpaid on the date due shall be collected in the  
24           same manner, including interest, as prescribed in G.S. 96-10.

25           Beginning January 1, 1978, each employer paying by  
26           reimbursement shall have his account computed on computation date  
27           (August 1) and if there is a deficit shall be billed for an amount  
28           necessary to bring his account to one percent (1%) of his taxable  
29           payroll. Any amount of his account in excess of that required to  
30           equal one percent (1%) of his payroll shall be refunded. Amounts due  
31           from any employer to bring his account to a one percent (1%)  
32           balance shall be billed as soon as practical and payment will be due  
33           within 25 days from the date of mailing of the statement of amount  
34           due. Amounts due from any nonprofit organization to bring its  
35           account to a one percent (1%) balance shall be billed as soon as  
36           practical, and payment will be due within 60 days from the date of  
37           mailing of the statement of the amount due.

38           e.     The ~~Commission-Division~~ may make necessary rules and regulations  
39           with respect to coverage of a group of nonprofit organizations and  
40           with respect to the reimbursement of benefits payments by such  
41           group of nonprofit organizations.

42           ...  
43           (e)    In order that the ~~Commission-Division~~ shall be kept informed at all times on the  
44           circumstances and conditions of unemployment within the State and as to whether the stability  
45           of the fund is being impaired under the operation and effect of the system provided in  
46           subsection (c) of this section, the actuarial study now in progress shall be continued and such  
47           other investigations and studies of a similar nature as the ~~Commission-Division~~ may deem  
48           necessary shall be made.

49           (f)    (1) On and after January 1, 1978, all benefits charged to a State or local  
50           governmental employing unit shall be paid to the ~~Commission-Division~~ within 25 days from

- 1 the date a list of benefit charges is mailed to the State or local governmental employing agency  
2 and the appropriate account(s) shall be credited with such payment(s).
- 3 (2) In lieu of paying for benefits by reimbursement as provided in subdivision  
4 (1) hereof, any State or local governmental employing unit may elect  
5 pursuant to rules and regulations established by the ~~Commission~~ Division:  
6 a. To pay contributions on an experience rating basis as provided in  
7 G.S. 96-9(a), (b), and (c); or,  
8 b. To pay to the ~~Commission~~ Division, within 25 days from the date a  
9 list of benefit charges is mailed to such employing unit, a sum equal  
10 to the amount which its account would be charged if it were a tax  
11 paying employer under G.S. 96-9(c)(2).
- 12 (3) State or local governmental employing units paying for benefits as provided  
13 in subdivision (1) herein may establish pool accounts; provided, that such  
14 pool accounts are established and maintained according to ~~the rules and~~  
15 ~~regulations of the Commission~~ adopted by the Division.
- 16 (4) Any governmental entity paying by reimbursement as provided in  
17 subdivision (1) hereof shall not have any benefits paid against its account  
18 noncharged or forgiven except as provided in G.S. 96-9(d)(2)c.
- 19 (g) Nothing contained in subsections (d), (f), and (i) of this section prevents the  
20 ~~Commission~~ Division from providing any reimbursing employer with informational bills or  
21 lists of charges on a basis more frequent than yearly, if in its sole discretion, the ~~Commission~~  
22 Division considers such action to be in the best interest of the ~~Commission~~ Division and the  
23 affected employer(s).
- 24 (h) (1) Any nonprofit organization which has been paying contributions on a  
25 reimbursement basis for at least three consecutive calendar years during none of which years  
26 the benefit charges exceeded four tenths of one percent (.4%) of its taxable payroll may, before  
27 November 1 of the fourth or subsequent calendar year, elect to pay contributions by special  
28 reimbursement on the basis provided for in subdivision (2) below but only upon the following  
29 conditions:
- 30 ...
- 31 b. The election shall apply to no less than the four calendar years  
32 following the year of election unless terminated by the ~~Commission~~  
33 Division under subdivision (3) below.
- 34 ...
- 35 e. No later than January 1 of the first year to which its election applies,  
36 the electing nonprofit organization shall furnish the ~~Commission~~  
37 Division a letter of credit in an amount equal to one hundred fifty  
38 percent (150%) of the account balance required under subdivision (2)  
39 below.
- 40 f. The ~~Commission~~ Division shall by regulation prescribe the form of  
41 the letter of credit and the criteria for the financial institution issuing  
42 such letter of credit along with the form of election under this  
43 section.
- 44 (2) Any qualified nonprofit organization that meets the conditions of  
45 subdivision (1) above shall, upon the approval of its election by the  
46 ~~Commission~~ Division, pay contributions by special reimbursement as  
47 follows:
- 48 ...
- 49 b. On the first day of each quarter of any calendar year, the  
50 ~~Commission~~ Division shall bill the employer for an amount  
51 necessary to bring its account to the required minimum balance, and

- 1 the amount so billed is due no later than 25 days after the bill is  
2 mailed.
- 3 (3) If any electing organization shall fail to make any quarterly payment when  
4 due:
- 5 a. The ~~Commission~~-Division may draw the full amount of the letter of  
6 credit for application to the employer's account;
- 7 ...
- 8 c. If, after demand, the organization shall fail to pay any sums required  
9 under paragraph b. above, the ~~Commission~~-Division may revoke the  
10 organization's election for special reimbursement and any difference  
11 between the employer's account balance and one percent (1%) of its  
12 total taxable payroll shall become immediately due and payable.
- 13 d. The ~~Commission~~-Division may, in addition, exercise any of the  
14 powers granted to it in G.S. 96-10 to collect any amount due.
- 15 e. Pursuant to ~~such regulations as the Commission may adopt, rules~~  
16 adopted by the Division, the ~~Commission~~-Division shall afford any  
17 organization affected by this paragraph a hearing to determine if any  
18 increase in the organization's minimum required balance should be  
19 reduced, in whole or in part, or if any revocation of a special  
20 reimbursement election should be rescinded. If the ~~Commission~~,  
21 Division, in its sole discretion, is satisfied that the conditions giving  
22 rise to the increase or revocation have been corrected, it may reduce  
23 such increase or rescind such revocation provided that it may require  
24 as a condition of such reduction or rescision a new letter of credit up  
25 to three times the amount normally required.
- 26 ...
- 27 (i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units shall be  
28 financed in accordance with the provisions of this subsection. For the purposes of this  
29 subsection, an "Indian tribe employing unit" is an Indian tribe, a subdivision or subsidiary of an  
30 Indian tribe, or a business enterprise wholly owned by an Indian tribe.
- 31 (1) Election. –
- 32 a. An Indian tribe employing unit shall pay contributions under the  
33 provisions of this Chapter, unless it elects in accordance with this  
34 subsection to pay the ~~Commission~~-Division for the Unemployment  
35 Insurance Fund an amount equal to the amount of benefits paid that  
36 is attributable to service in the employ of the unit, to individuals for  
37 weeks of unemployment that begin within a benefit year established  
38 during the effective period of the election.
- 39 b. An Indian tribe employing unit may elect to become liable for  
40 payments in lieu of contributions for a period of not less than three  
41 calendar years by filing a written notice of its election with the  
42 ~~Commission~~-Division at least 30 days before the January 1 effective  
43 date of the election.
- 44 c. An Indian tribe employing unit that makes an election in accordance  
45 with this subsection will continue after the end of the three calendar  
46 years to be liable for payments in lieu of contributions until it files  
47 with the ~~Commission~~-Division a written notice terminating its  
48 election at least 30 days before the January 1 effective date of the  
49 termination.
- 50 d. The account of an Indian tribe employing unit that has been paying  
51 contributions under this Chapter for a period of at least three

- 1 consecutive calendar years and that elects to change to a  
 2 reimbursement basis shall be closed and shall not be used in any  
 3 future computation of the unit's contribution rate in any manner.
- 4 e. The ~~Commission~~, Division, in accordance with regulations it adopts,  
 5 shall notify each Indian tribe employing unit of any determination of  
 6 the effective date of any election it makes and of any termination of  
 7 the election. These determinations shall be subject to reconsideration,  
 8 appeal, and review.
- 9 (2) Procedure. – Indian tribe employing units' payments by reimbursement in  
 10 lieu of contributions shall be made and processed as provided in this  
 11 subdivision.
- 12 a. Quarterly contributions and wage reports and advance payments shall  
 13 be submitted to the ~~Commission~~ Division quarterly under the same  
 14 conditions and requirements of G.S. 96-9 and G.S. 96-10, except that  
 15 the amount of advance payments shall be computed as one percent  
 16 (1%) of taxable wages and entered on the reports, and except that the  
 17 wage base shall be the same as that provided for in G.S. 96-9(a)(5).  
 18 Collection of these advance payments shall be made as provided for  
 19 the collection of contributions in G.S. 96-10.
- 20 Any Indian tribe employing unit paying by reimbursement having  
 21 been, prior to July 1, under the reimbursement method of payment  
 22 for the preceding calendar year, shall continue to file quarterly  
 23 reports but shall make no payments with those reports.
- 24 b. The ~~Commission~~ Division shall establish a separate account for each  
 25 Indian tribe employing unit paying by reimbursement. The account  
 26 shall be credited and maintained as provided in G.S. 96-9(c)(1),  
 27 except that advance payments shall be credited in full, and voluntary  
 28 contributions are not applicable.
- 29 ...
- 30 d. As of July 31 of each year, and prior to January 1 of the succeeding  
 31 year, the ~~Commission~~ Division shall determine the balance of each  
 32 Indian tribe employing unit's account and shall furnish the unit with a  
 33 statement of all charges and credits to the account.
- 34 If the balance in the account does not equal one percent (1%) of  
 35 taxable wages, the Indian tribe employing unit must, upon notice and  
 36 demand for payment mailed to its last known address, pay into the  
 37 account an amount that will bring the balance to one percent (1%) of  
 38 taxable wages. This amount becomes due on or before the 25th day  
 39 after the notice and demand for payment is mailed. Any amount  
 40 unpaid on the due date shall be collected in the same manner,  
 41 including interest, as prescribed in G.S. 96-10.
- 42 If there is a debit balance in the account, the Indian tribe  
 43 employing unit must, upon notice and demand for payment mailed to  
 44 its last known address, pay into the account an amount necessary to  
 45 bring the account to one percent (1%) of taxable wages. This amount  
 46 becomes due on or before the 25th day after the notice and demand  
 47 for payment is mailed. Any amount unpaid on the due date shall be  
 48 collected in the same manner, including interest, as prescribed in  
 49 G.S. 96-10.
- 50 ...

- 1 (4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make  
2 payments, including interest and penalties, required under this subsection  
3 after all collection activities considered necessary by the ~~Commission~~  
4 Division have been exhausted, services performed for that employing unit  
5 are no longer treated as "employment" for the purpose of coverage under this  
6 Chapter. An Indian tribe employing unit that has lost coverage regains  
7 coverage under this Chapter for services performed for the employing unit if  
8 the ~~Commission~~-Division determines that all contributions, payments in lieu  
9 of contributions, penalties, and interest have been paid.

10 The ~~Commission~~-Division shall notify the Internal Revenue Service and  
11 the United States Department of Labor of any termination or reinstatement  
12 of coverage pursuant to this subdivision.

13 ...."

14 **SECTION 2.9.** G.S. 96-10 reads as rewritten:

15 **"§ 96-10. Collection of contributions.**

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

29 (b) Collection. –

- 30 (1) If, after due notice, any employer defaults in any payment of contributions or  
31 interest thereon, the amount due shall be collected by civil action in the  
32 name of the ~~Commission~~-Division, and the employer adjudged in default  
33 shall pay the costs of such action. Civil actions brought under this section to  
34 collect contributions or interest thereon from an employer shall be heard by  
35 the court at the earliest possible date, and shall be entitled to preference upon  
36 the calendar of the court over all other civil actions, except petitions for  
37 judicial review under this Chapter and cases arising under the Workers'  
38 Compensation Law of this State; or, if any contribution imposed by this  
39 Chapter, or any portion thereof, and/or penalties duly provided for the  
40 nonpayment thereof shall not be paid within 30 days after the same become  
41 due and payable, and after due notice and reasonable opportunity for  
42 hearing, the ~~Commission~~-Division, under the hand of ~~its chairman~~, ~~the~~  
43 Assistant Secretary, may certify the same to the clerk of the superior court of  
44 the county in which the delinquent resides or has property, and additional  
45 copies of said certificate for each county in which the ~~Commission~~-Division  
46 has reason to believe the delinquent has property located. If the amount of a  
47 delinquency is less than fifty dollars (\$50.00), the ~~Commission~~-Division  
48 may not certify the amount to the clerk of court until a field tax auditor or  
49 another representative of the ~~Commission~~-Division personally contacts, or  
50 unsuccessfully attempts to personally contact, the delinquent and collect the  
51 amount due. A certificate or a copy of a certificate forwarded to the clerk of

1 the superior court shall immediately be docketed and indexed on the cross  
2 index of judgments, and from the date of such docketing shall constitute a  
3 preferred lien upon any property which said delinquent may own in said  
4 county, with the same force and effect as a judgment rendered by the  
5 superior court. The ~~Commission~~Division shall forward a copy of said  
6 certificate to the sheriff or sheriffs of such county or counties, or to a duly  
7 authorized agent of the ~~Commission~~Division, and when so forwarded and in  
8 the hands of such sheriff or agent of the ~~Commission~~Division, shall have  
9 all the force and effect of an execution issued to such sheriff or agent of the  
10 ~~Commission~~Division by the clerk of the superior court upon a judgment of  
11 the superior court duly docketed in said county. Provided, however, the  
12 ~~Commission~~Division may in its discretion withhold the issuance of said  
13 certificate or execution to the sheriff or agent of the ~~Commission~~Division  
14 for a period not exceeding 180 days from the date upon which the original  
15 certificate is certified to the clerk of superior court. The ~~Commission~~Division  
16 Division is further authorized and empowered to issue alias copies of said  
17 certificate or execution to the sheriff or sheriffs of such county or counties,  
18 or to a duly authorized agent of the ~~Commission~~Division in all cases in  
19 which the sheriff or duly authorized agent has returned an execution or  
20 certificate unsatisfied; when so issued and in the hands of the sheriff or duly  
21 authorized agent of the ~~Commission~~Division, such alias shall have all the  
22 force and effect of an alias execution issued to such sheriff or duly  
23 authorized agent of the ~~Commission~~Division by the clerk of the superior  
24 court upon a judgment of the superior court duly docketed in said county.  
25 Provided, however, that notwithstanding any provision of this subsection,  
26 upon filing one written notice with the ~~Commission~~Division, the sheriff of  
27 any county shall have the sole and exclusive right to serve all executions and  
28 make all collections mentioned in this subsection and in such case no agent  
29 of the ~~Commission~~Division shall have the authority to serve any executions  
30 or make any collections therein in such county. A return of such execution,  
31 or alias execution, shall be made to the ~~Commission~~Division, together with  
32 all moneys collected thereunder, and when such order, execution, or alias is  
33 referred to the agent of the ~~Commission~~Division for service the said agent  
34 of the ~~Commission~~Division shall be vested with all the powers of the sheriff  
35 to the extent of serving such order, execution or alias and levying or  
36 collecting thereunder. The agent of the ~~Commission~~Division to whom such  
37 order or execution is referred shall give a bond not to exceed three thousand  
38 dollars (\$3,000) approved by the ~~Commission~~Division for the faithful  
39 performance of such duties. The liability of said agent shall be in the same  
40 manner and to the same extent as is now imposed on sheriffs in the service  
41 of executions. If any sheriff of this State or any agent of the ~~Commission~~Division  
42 Division who is charged with the duty of serving executions shall willfully  
43 fail, refuse, or neglect to execute any order directed to him by the said  
44 ~~Commission~~Division and within the time provided by law, the official bond  
45 of such sheriff or of such agent of the ~~Commission~~Division shall be liable  
46 for the contributions, penalty, interest, and costs due by the employer.

- 47 (2) Any representative of the ~~Employment Security Commission~~Division may  
48 examine and copy the county tax listings, detailed inventories, statements of  
49 assets or similar information required under General Statutes, Chapter 105,  
50 to be filed with the tax supervisor of any county in this State by any person,  
51 firm, partnership, or corporation, domestic or foreign, engaged in operating

1 any business enterprise in such county. Any such information obtained by an  
2 agent or employee of the ~~Commission~~Division shall not be divulged,  
3 published, or open to public inspection other than to the  
4 ~~Commission's~~Division's employees in the performance of their public duties.  
5 Any employee ~~or member of the Commission of the Division~~ who violates  
6 any provision of this section shall be fined not less than twenty dollars  
7 (\$20.00), nor more than two hundred dollars (\$200.00), or imprisoned for  
8 not longer than 90 days, or both.

9 (3) When the ~~Commission~~Division furnishes the clerk of superior court of any  
10 county in this State a written statement or certificate to the effect that any  
11 judgment docketed by the ~~Commission~~Division against any firm or  
12 individual has been satisfied and paid in full, and said statement or  
13 certificate is signed by the ~~chairman of the Commission~~Secretary of  
14 Commerce and attested by ~~its secretary,~~the Assistant Secretary, with the  
15 seal of the ~~Commission~~Division affixed, it shall be the duty of the clerk of  
16 superior court to file said certificate and enter a notation thereof on the  
17 margin of the judgment docket to the effect that said judgment has been paid  
18 and satisfied in full, and is in consequence canceled of record. ~~Such~~The  
19 cancellation shall have the full force and effect of a cancellation entered by  
20 an attorney of record for the ~~Commission~~Division. It shall also be the duty  
21 of such clerk, when any such certificate is furnished him by the ~~Commission~~  
22 Division showing that a judgment has been paid in part, to make a notation  
23 on the margin of the judgment docket showing the amount of such payment  
24 so certified and to file said certificate. This paragraph shall apply to  
25 judgments already docketed, as well as to the future judgments docketed by  
26 the ~~Commission~~Division. For the filing of said statement or certificate and  
27 making new notations on the record, the clerk of superior court shall be paid  
28 a fee of fifty cents (50¢) by the ~~Commission~~Division.

29 (c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution  
30 of an employer's assets pursuant to an order of any court under the laws of this State, including  
31 any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or  
32 similar proceeding, contributions then or thereafter due shall be paid in full prior to all other  
33 claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars  
34 (\$250.00) to each claimant, earned within six months of the commencement of the proceeding.  
35 In the event of an employer's adjudication in bankruptcy, judicially confirmed extension  
36 proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions  
37 then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act  
38 (U.S.C., Title 11, section 104(a)), as amended.

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

44 (d) Collections of Contributions upon Transfer or Cessation of Business. – The  
45 contribution or tax imposed by G.S. 96-9, and subsections thereunder, of this Chapter shall be a  
46 lien upon the assets of the business of any employer subject to the provisions hereof who shall  
47 lease, transfer or sell out his business, or shall cease to do business and such employer shall be  
48 required, by the next reporting date as prescribed by the ~~Commission~~Division, to file with the  
49 ~~Commission~~Division all reports and pay all contributions due with respect to wages payable  
50 for employment up to the date of such lease, transfer, sale or cessation of the business and such  
51 employer's successor in business shall be required to withhold sufficient of the purchase money

1 to cover the amount of said contributions due and unpaid until such time as the former owner or  
2 employer shall produce a receipt from the ~~Commission-Division~~ showing that the contributions  
3 have been paid, or a certificate that no contributions are due. If the purchaser of a business or a  
4 successor of such employer shall fail to withhold purchase money or any money due to such  
5 employer in consideration of a lease or other transfer and the contributions shall be due and  
6 unpaid after the next reporting date, as above set forth, such successor shall be personally liable  
7 to the extent of the assets of the business so acquired for the payment of the contributions  
8 accrued and unpaid on account of the operation of the business by the former owner or  
9 employer.

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

32 (f) No injunction shall be granted by any court or judge to restrain the collection of any  
33 tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain  
34 the sale of any property under writ of execution, judgment, decree or order of court for the  
35 nonpayment thereof. Whenever any employer, person, firm or corporation against whom taxes  
36 or contributions provided for in this Chapter have been assessed, shall claim to have a valid  
37 defense to the enforcement of the tax or contribution so assessed or charged, such employer,  
38 person, firm or corporation shall pay the tax or contribution so assessed to the ~~Commission;~~  
39 ~~Division;~~ but if at the time of such payment he shall notify the ~~Commission-Division~~ in writing  
40 that the same is paid under protest, such payment shall be without prejudice to any defenses or  
41 rights he may have in the premises, and he may, at any time within 30 days after such payment,  
42 demand the same in writing from the ~~Commission;~~ ~~Division;~~ and if the same shall not be  
43 refunded within 90 days thereafter, he may sue the ~~Commission-Division~~ for the amount so  
44 demanded; such suit against the ~~Employment Security Commission of North Carolina-Division~~  
45 must be brought in the Superior Court of Wake County, or in the county in which the taxpayer  
46 resides, or in the county where the taxpayer conducts his principal place of business; and if,  
47 upon the trial it shall be determined that such tax or contribution or any part thereof was for any  
48 reason invalid, excessive or contrary to the provisions of this Chapter, the amount paid shall be  
49 refunded by the ~~Commission-Division~~ accordingly. The remedy provided by this subsection  
50 shall be deemed to be cumulative and in addition to such other remedies as are provided by  
51 other subsections of this Chapter. No suit, action or proceeding for refund or to recover



1 contributions or payroll taxes paid under protest according to the provisions of this subsection  
2 shall be maintained unless such suit, action or proceeding is commenced within one year after  
3 the expiration of the 90 days mentioned in this subsection, or within one year from the date of  
4 the refusal of ~~said Commission~~ the Division to make refund should such refusal be made before  
5 the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not  
6 be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed  
7 as repealing, abridging or extending any other limitation or condition imposed by this Chapter.

8 (g) Upon the motion of the ~~Commission~~ Division, any employer refusing to submit any  
9 report required under this Chapter, after 10 days' written notice sent by the ~~Commission~~  
10 Division by registered or certified mail to the employer's last known address, may be enjoined  
11 by any court of competent jurisdiction from hiring and continuing in employment any  
12 employees until such report is properly submitted. When an execution has been returned to the  
13 ~~Commission~~ Division unsatisfied, and the employer, after 10 days' written notice sent by the  
14 ~~Commission~~ Division by registered mail to the employer's last known address, refuses to pay  
15 the contributions covered by the execution, such employer shall upon the motion of the  
16 ~~Commission~~ Division be enjoined by any court of competent jurisdiction from hiring and  
17 continuing in employment any employees until such contributions have been paid.

18 An employer who fails to file a report within the required time shall be assessed a late filing  
19 penalty of five percent (5%) of the amount of contributions due with the report for each month  
20 or fraction of a month the failure continues. The penalty may not exceed twenty-five percent  
21 (25%) of the amount of contributions due. An employer who fails to file a report within the  
22 required time but owes no contributions shall not be assessed a penalty unless the employer's  
23 failure to file continues for more than 30 days.

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

30 (i) Except as otherwise provided in this subsection, no suit or proceedings for the  
31 collection of unpaid contributions may be begun under this Chapter after five years from the  
32 date on which the contributions become due, and no suit or proceeding for the purpose of  
33 establishing liability and/or status may be begun with respect to any period occurring more than  
34 five years prior to the first day of January of the year within which the suit or proceeding is  
35 instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat  
36 or evade the payment of any contributions becoming due under this Chapter. A proceeding  
37 shall be deemed to have been instituted or begun upon the date of issuance of an order by the  
38 ~~chairman~~ Assistant Secretary of the ~~Commission~~ Division directing a hearing to be held to  
39 determine liability or nonliability, and/or status under this Chapter of an employing unit, or  
40 upon the date notice and demand for payment is mailed by certified mail to the last known  
41 address of the employing unit. The order shall be deemed to have been issued on the date the  
42 order is mailed by certified mail to the last known address of the employing unit. The running  
43 of the period of limitations provided in this subsection for the making of assessments or  
44 collection shall, in a case under Title II of the United States Code, be suspended for the period  
45 during which the ~~Commission~~ Division is prohibited by reason of the case from making the  
46 assessment or collection and for a period of one year after the prohibition is removed.

47 (j) Waiver of Interest and Penalties. – The ~~Commission~~ Division may, for good cause  
48 shown, reduce or waive any interest assessed on unpaid contributions under this section. The  
49 ~~Commission~~ Division may reduce or waive any penalty provided in G.S. 96-10(a) or  
50 G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed  
51 report bears a postmark that discloses that it was mailed by midnight of the due date but was

1 addressed or delivered to the wrong State or federal agency. The late payment penalty and the  
2 late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay  
3 was caused by any of the following:

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

27 In the waiver of any penalty, the burden shall be upon the employer to establish to the  
28 satisfaction of the ~~Chairman, the Assistant Administrator, or their Secretary, Assistant~~  
29 ~~Secretary, or their~~ designees, that the delinquency for which the penalty was imposed was due  
30 to any of the foregoing facts or circumstances.

31 The waiver or reduction of interest or a penalty under this subsection shall be valid and  
32 binding upon the ~~Commission-Division~~. The reason for any reduction or waiver shall be made  
33 a part of the permanent records of the employing unit to which it applies."

34 **SECTION 2.10.** G.S. 96-11 reads as rewritten:

35 "**§ 96-11. Period, election, and termination of employer's coverage.**

36 ...  
37 (b) Prior to January 1, 1972, and except as otherwise provided in subsections (a), (c),  
38 and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter  
39 only as of the first day of January of any calendar year, if it files with the ~~Commission-Division~~  
40 prior to the first day of March of such calendar year a written application for termination of  
41 coverage and the ~~Commission-Division~~ finds that there were no 20 different weeks in the  
42 preceding calendar year (whether or not such weeks are or were consecutive) within which said  
43 employing unit employed four or more individuals in employment (not necessarily  
44 simultaneously and irrespective of whether the same individuals were employed in each such  
45 week); provided that on and after January 1, 1972, except as otherwise provided in subsections  
46 (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this  
47 Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission~~  
48 ~~Division~~ prior to the first day of March of such year a written application for termination of  
49 coverage and the ~~Commission-Division~~ finds that there were no 20 different weeks within the  
50 preceding calendar year (whether or not such weeks are or were consecutive) within which said  
51 employing unit employed one or more individuals in employment (not necessarily

1 simultaneously and irrespective of whether the same individual was employed in each such  
2 week), and the ~~Commission-Division~~ finds that there was no calendar quarter within the  
3 preceding calendar year in which the total wages of its employees were one thousand five  
4 hundred dollars (\$1,500) or more. Any employing unit, as defined in G.S. 96-8(5)n, shall cease  
5 to be an employer only if it files with the ~~Commission-Division~~ by the first day of March of any  
6 calendar year an application for termination of coverage, and the ~~Commission-Division~~ finds  
7 that there were no 20 different weeks within the preceding calendar year in which such  
8 employing unit had at least 10 individuals in employment, and that there was no calendar  
9 quarter within the preceding calendar year in which such employing unit paid twenty thousand  
10 dollars (\$20,000) or more in wages for services in employment. Any employing unit, as defined  
11 in G.S. 96-8(5)o, shall cease to be an employer if it files with the ~~Commission-Division~~ by the  
12 first day of March of any calendar year an application for termination of coverage and the  
13 ~~Commission-Division~~ finds that there was no calendar quarter within the preceding calendar  
14 year in which such employing unit paid one thousand dollars (\$1,000) or more in wages for  
15 services in employment. Provided further, except as otherwise provided in subsections (a), (c),  
16 and (d) of this section on and after January 1, 1974, an "employer" as the term is used in  
17 G.S. 96-8(5)k shall cease to be an employer subject to this Chapter only as of the first day of  
18 January in any calendar year, if it files with the ~~Commission-Division~~ prior to the first day of  
19 March of such year a written application for termination of coverage and the ~~Commission~~  
20 ~~Division~~ finds that there were no 20 different weeks within the preceding calendar year  
21 (whether or not such weeks are or were consecutive) within which said employing unit  
22 employed four or more individuals in employment (not necessarily simultaneously and  
23 irrespective of whether the same individuals were employed in each such week). For the  
24 purpose of this subsection, the two or more employing units mentioned in paragraphs b or c of  
25 G.S. 96-8, subdivision (5) shall be treated as a single employing unit: Provided, however, that  
26 any employer, as the term is used in G.S. 96-8(5)k, whose liability covers a period of more than  
27 two years when first discovered by the ~~Commission-Division~~, upon filing a written application  
28 for termination within 90 days after notification of his liability by the ~~Commission-Division~~,  
29 may be terminated as an employer effective January 1; and for any subsequent year if the  
30 ~~Commission-Division~~ finds there were no 20 different weeks within the preceding calendar  
31 year (whether or not such weeks are or were consecutive) within which said employing unit  
32 employed four or more individuals in employment (not necessarily simultaneously and  
33 irrespective of whether the same individuals were employed in each such week). Provided  
34 further, any other employer whose liability covers a period of more than two years when first  
35 discovered by the ~~Commission-Division~~, upon filing a written application for termination  
36 within 90 days after notification of his liability by the ~~Commission-Division~~, may be terminated  
37 as an employer effective January 1, and for any subsequent years if the ~~Commission~~  
38 ~~Division~~ finds that prior to January 1, 1972, there were no 20 different weeks within the preceding  
39 calendar year (whether or not such weeks are or were consecutive) within which said  
40 employing unit employed four or more individuals in employment (not necessarily  
41 simultaneously and irrespective of whether the same individuals were employed in each such  
42 week); and with respect to 1972 and subsequent years, if the ~~Commission~~  
43 ~~Division~~ finds that there were no 20 different weeks within the preceding calendar year (whether or not such  
44 weeks are or were consecutive) within which said employing unit employed one or more  
45 individuals in employment (not necessarily simultaneously and irrespective of whether the  
46 same individual was employed in each such week), and the ~~Commission-Division~~ finds that  
47 there was no calendar quarter within the preceding calendar year in which the total wages of its  
48 employees were one thousand five hundred dollars (\$1,500) or more. In such cases, a protest of  
49 liability shall be considered as an application for termination within the meaning of this  
50 provision where the decision with respect to such protest has not become final; provided

1 further, this provision shall not apply in any case of willful attempt in any manner to defeat or  
2 evade the payment of contributions becoming due under this Chapter.

3 (c) (1) An employing unit, not otherwise subject to this Chapter, which files with  
4 the ~~Commission~~ Division its written election to become an employer subject  
5 hereto for not less than two calendar years shall, with the written approval of  
6 such election by the ~~Commission~~ Division, become an employer subject  
7 hereto to the same extent as all other employers, as of the date stated in such  
8 approval, and shall cease to be subject hereto as of January 1 of any calendar  
9 year subsequent to such two calendar years only if, prior to the first day of  
10 March following such first day of January, it has filed with the ~~Commission~~  
11 Division a written notice to that effect, provided such employing unit may be  
12 terminated by the ~~Commission~~ Division as provided under the provisions of  
13 subdivision ~~(3)~~ (4) of this subsection.

14 (2) Any employing unit for which services that do not constitute employment as  
15 defined in this Chapter are performed may file with the ~~Commission~~  
16 Division a written election that all such services performed by individuals in  
17 its employ, in one or more distinct establishments or places of business, shall  
18 be deemed to constitute employment for all the purposes of this Chapter for  
19 not less than two calendar years. Upon the written approval of such election  
20 by the ~~Commission~~ Division such services shall be deemed to constitute  
21 employment subject to this Chapter from and after the date stated in such  
22 approval. Such services shall cease to be deemed employment, subject  
23 hereto as of January one of any calendar year subsequent to such two  
24 calendar years only if, prior to the first day of March following such first day  
25 of January, such employing unit has filed with the ~~Commission~~ Division a  
26 written notice to that effect, provided such employing unit may be  
27 terminated by the ~~Commission~~ Division as provided under the provisions of  
28 subdivision ~~(3)~~ (4) of this subsection.

29 (3) ...

30 d. An election under this section may be terminated as of January 1 of  
31 any calendar year subsequent to such two calendar years only if 30  
32 days prior to such January 1, such employer has filed with the  
33 ~~Commission~~ Division a written notice to that effect.

34 (4) On and after July 1, 1965, the ~~Commission~~ Division on its own motion and  
35 in its discretion, upon 30 days' written notice mailed to the last known  
36 address of such employer, may terminate coverage of any employer which  
37 has become subject to this Chapter solely by electing coverage under the  
38 provisions of this subsection.

39 (d) Except as provided in G.S. 96-9(c)(6), an employer who has not paid any covered  
40 wages for a period of two consecutive calendar years shall cease to be an employer subject to  
41 this Chapter. An employer who has not had individuals in employment and who has made due  
42 application for exemption from filing contributions and wage reports required under this  
43 Chapter and has been so exempted may be terminated from liability upon written application  
44 within 120 days after notification of the reactivation of his account. Such termination shall be  
45 effective January 1 of any calendar year only if the ~~Commission~~ Division finds there were no  
46 20 different weeks within the preceding calendar year, whether or not such weeks are or were  
47 consecutive, within which said employer employed one or more individuals in employment  
48 (four or more prior to January 1, 1972), not necessarily simultaneously and irrespective of  
49 whether the same individuals were employed in each such week, and the ~~Commission~~ Division  
50 finds that there was no calendar quarter within the preceding calendar year in which the total  
51 wages of its employees were one thousand five hundred dollars (\$1,500) or more, except as

1 otherwise provided. Provided further, an employer, as the term is used in G.S. 96-8(5)k, who  
2 has not had individuals in employment and who has made due application for exemption from  
3 filing contributions and wage reports required under this Chapter and has been so exempted  
4 may be terminated from liability upon written application within 120 days after notification of  
5 the reactivation of its account. Such termination shall be effective January 1 of any calendar  
6 year only if the ~~Commission~~-Division finds that there were no 20 different weeks within the  
7 preceding calendar year, whether or not such weeks are or were consecutive, within which said  
8 employer employed four or more individuals in employment, not necessarily simultaneously  
9 and irrespective of whether the same individuals were employed in each such week. In such  
10 cases a protest of liability shall be considered as an application for termination within the  
11 meaning of this provision where the decision with respect to such protest has not become final."

12 **SECTION 2.11.** G.S. 96-12 reads as rewritten:

13 **"§ 96-12. Benefits.**

14 (a) Payment of Benefits. – Twenty-four months after the date when contributions first  
15 accrue under this Chapter benefits shall become payable from the fund. All benefits shall be  
16 paid through employment offices, in accordance with ~~such regulations as the Commission may~~  
17 prescribe-rules adopted by the Division.

18 (b) (1) a. Repealed by Session Laws 1977, c. 727, s. 52.

19 b. An individual who is totally unemployed shall be paid the  
20 individual's weekly benefit amount. The weekly benefit amount for  
21 an individual is the amount of the high-quarter wages paid to the  
22 individual in the individual's base period, divided by 26 and, if the  
23 quotient is not a whole dollar, rounded to the next lower whole  
24 dollar. If this amount is less than fifteen dollars (\$15.00), the  
25 individual is not eligible for benefits.

26 c. Repealed by Session Laws 1981, c. 160, s. 17.

27 (2) Each August 1, the ~~Commission~~-Division shall calculate the maximum  
28 weekly benefit amount available to an individual. The maximum weekly  
29 benefit amount is sixty-six and two-thirds percent (66 2/3%) of the average  
30 weekly insured wage rounded, if the amount is not a whole dollar, to the  
31 next lower whole dollar. The maximum weekly benefit amount set on  
32 August 1 of a year applies to an individual whose benefit year begins on or  
33 after that date and before August 1 of the following year.

34 ...

35 (d) Duration of Benefits. – The total benefits paid to an individual shall not be less than  
36 the minimum total benefit and shall not exceed the lesser of the maximum total benefit or the  
37 individual's total benefit amount. The total benefit amount for an individual is determined by  
38 dividing the individual's base-period wages by the individual's high-quarter wages, multiplying  
39 that quotient by eight and two thirds, rounding the result to the nearest whole number, and then  
40 multiplying the resulting amount by the individual's weekly benefit amount. The minimum total  
41 benefit for an individual is 13 times the individual's weekly benefit amount. The maximum  
42 total benefit for an individual is 26 times the individual's weekly benefit amount, unless the  
43 benefits are extended further in accordance with G.S. 96-12.01. The ~~Commission~~-Division shall  
44 establish and maintain individual wage record accounts for each individual who earns wages in  
45 covered employment for as long as the wages would be included in a determination of benefits.

46 ...

47 (g) Income Tax Withholding. – When an individual files a new claim for  
48 unemployment compensation, the individual shall be advised in writing at the time of filing  
49 that:

50 (1) Unemployment compensation is subject to federal and State individual  
51 income tax.

- 1 (2) Requirements exist pertaining to estimated tax payments.
- 2 (3) The individual may elect to have federal individual income tax deducted and
- 3 withheld from the individual's payment of unemployment compensation at
- 4 the amount specified in section 3402 of the Internal Revenue Code.
- 5 (4) The individual may elect to have State individual income tax deducted and
- 6 withheld from the individual's payment of unemployment compensation in
- 7 an amount determined by the individual.
- 8 (5) The individual may change a previously elected withholding status.

9 The ~~Commission~~Division shall follow the procedures specified by the United States  
 10 Department of Labor, the Internal Revenue Service, and the Department of Revenue pertaining  
 11 to the deducting and withholding of individual income tax. The amounts deducted and withheld  
 12 from unemployment compensation shall remain in the Unemployment Insurance Fund until  
 13 transferred to the appropriate taxing authority as a payment of income tax. If two or more  
 14 deductions are made from an individual's unemployment compensation payment, then the  
 15 deductions will be deducted and withheld in accordance with priorities established by the  
 16 ~~Commission~~Division."

17 **SECTION 2.12.** G.S. 96-12.01 reads as rewritten:

18 **"§ 96-12.01. Extended benefits.**

- 19 ...
- 20 (a1) Definitions. – As used in this section, unless the context clearly requires otherwise .

21 –

22 ...

- 23 (4) There is an "on indicator" for this State for a week if the ~~Commission~~  
 24 Division determines, in accordance with the regulations of the United States  
 25 Secretary of Labor, that for the period consisting of such week and the  
 26 immediate preceding 12 weeks, the rate of insured unemployment (not  
 27 seasonally adjusted) under this Chapter:

28 ...

- 29 (5) There is an "off indicator" for this State for a week if the ~~Commission~~  
 30 Division determines, in accordance with the regulations of the United States  
 31 Secretary of Labor, that for the period consisting of such week and the  
 32 immediately preceding 12 weeks, the rate of insured unemployment (not  
 33 seasonally adjusted) under this Chapter:

- 34 a. Was less than one hundred twenty percent (120%) of the average of
- 35 such rates for the corresponding 13-week period ending in each of
- 36 the preceding two calendar years, and was less than six percent (6%),
- 37 or
- 38 b. Was less than five percent (5%).

- 39 (6) "Rate of insured unemployment," for the purposes of subparagraphs (4) and
- 40 (5) of this subsection, means the percentage derived by dividing

- 41 a. The average weekly number of individuals filing claims for regular
- 42 compensation in this State for weeks of unemployment with respect
- 43 to the most recent 13 consecutive-week period, as determined by the
- 44 ~~Commission~~Division, on the basis of its reports to the United States
- 45 Secretary of Labor, by
- 46 b. The average monthly employment covered under this Chapter for the
- 47 first four of the most recent six completed calendar quarters ending
- 48 before the end of such 13-week period.

49 ...

- 50 (b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for
- 51 Payment of, Extended Benefits. – Except when the result would be inconsistent with the other

1 provisions of this section and in matters of eligibility determination, as provided ~~in the~~  
2 ~~regulations of by rules adopted by the Commission, Division,~~ the provisions of this Chapter  
3 which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the  
4 payment of, extended benefits.

5 (c) Eligibility Requirements for Extended Benefits. – An individual shall be eligible to  
6 receive extended benefits with respect to any week of unemployment in his eligibility period  
7 only if the ~~Commission~~ Division finds that with respect to such week:

8 (1) ~~He~~ The individual is an "exhaustee" as defined in subsection (a)(10).

9 (2) ~~He~~ The individual has satisfied the requirements of this Chapter for the  
10 receipt of regular benefits that are applicable to individuals claiming  
11 extended benefits, including not being subject to a disqualification for the  
12 receipt of benefits. Provided, however, that for purposes of disqualification  
13 for extended benefits for weeks of unemployment beginning after March 31,  
14 1981, the term "suitable work" means any work which is within the  
15 individual's capabilities to perform if: (i) The gross average weekly  
16 remuneration payable for the work exceeds the sum of the individual's  
17 weekly extended benefit amount plus the amount, if any, of supplemental  
18 unemployment benefits (as defined in section 501(C)(17)(D) of the Internal  
19 Revenue Code of 1954) payable to such individual for such week; and (ii)  
20 the gross wages payable for the work equal the higher of the minimum  
21 wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938  
22 as amended (without regard to any exemption), or the State minimum wage;  
23 and (iii) the work is offered to the individual in writing and is listed with the  
24 State employment service; and (iv) the considerations contained in  
25 G.S. 96-14(3) for determining whether or not work is suitable are applied to  
26 the extent that they are not inconsistent with the specific requirements of this  
27 subdivision; and (v) the individual cannot furnish evidence satisfactory to  
28 the ~~Commission~~ Division that his prospects for obtaining work in his  
29 customary occupation within a reasonably short period of time are good, but  
30 if the individual submits evidence which the ~~Commission~~ Division deems  
31 satisfactory for this purpose, the determination of whether or not work is  
32 suitable with respect to such individual shall be made in accordance with  
33 G.S. 96-14(3) without regard to the definition contained in this subdivision.  
34 Provided, further, that no work shall be deemed to be suitable work for an  
35 individual which does not accord with the labor standard provisions set forth  
36 in this subdivision, but the employment service shall refer any individual  
37 claiming extended benefits to any work which is deemed suitable hereunder.  
38 Provided, further, that any individual who has been disqualified for  
39 voluntarily leaving employment, being discharged for misconduct or  
40 substantial fault, or refusing suitable work under G.S. 96-14 and who has  
41 had the disqualification terminated, shall have such disqualification  
42 reinstated when claiming extended benefits unless the termination of the  
43 disqualification was based upon employment subsequent to the date of the  
44 disqualification.

45 (3) After March 31, 1981, he has not failed either to apply for or to accept an  
46 offer of suitable work, as defined in G.S. 96-12.01(c)(2), to which he was  
47 referred by an employment office of the ~~Commission, Division,~~ and he has  
48 furnished the ~~Commission~~ Division with tangible evidence that he has  
49 actively engaged in a systematic and sustained effort to find work. If an  
50 individual is found to be ineligible hereunder, he shall be ineligible  
51 beginning with the week in which he either failed to apply for or to accept

1 the offer of suitable work or failed to furnish the ~~Commission~~Division with  
 2 tangible evidence that he has actively engaged in a systematic and sustained  
 3 effort to find work and such individual shall continue to be ineligible for  
 4 extended benefits until he has been employed in each of four subsequent  
 5 weeks (whether or not consecutive) and has earned remuneration equal to  
 6 not less than four times his weekly benefit amount.

7 ...  
 8 (f) Beginning and Termination of Extended Benefit Period. –

- 9 (1) Whenever an extended benefit period is to become effective in this State as a  
 10 result of an "on" indicator, or an extended benefit period is to be terminated  
 11 in this State as a result of an "off" indicator, the ~~Commission~~Division shall  
 12 make an appropriate public announcement; and  
 13 (2) Computations required by the provisions of subsection (a)(6) shall be made  
 14 by the ~~Commission~~Division, in accordance with regulations prescribed by  
 15 the United States Secretary of Labor.

16 ...."

17 **SECTION 2.13.** G.S. 96-12.1 reads as rewritten:

18 "**§ 96-12.1. Extended base period for certain job related injuries.**

19 If an individual lacks sufficient base period wages because of a job related injury for which  
 20 he received workers' compensation, upon written application by the claimant, an extended base  
 21 period will be substituted for the current base period on a quarter-by-quarter basis as needed to  
 22 establish a valid claim. "Extended base period" means the four quarters prior to the claimant's  
 23 base period. These four quarters may be substituted for base period quarters on a  
 24 quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been  
 25 used to establish a prior claim, except any wages earned that would render the ~~Employment~~  
 26 ~~Security Commission of North Carolina~~Division of Employment Security out of compliance  
 27 with applicable federal law will be excluded if used in a prior claim. Benefits paid on the basis  
 28 of an extended base period, which would not otherwise be payable, shall be noncharged."

29 **SECTION 2.14.** G.S. 96-13 reads as rewritten:

30 "**§ 96-13. Benefit eligibility conditions.**

31 (a) An unemployed individual shall be eligible to receive benefits with respect to any  
 32 week only if the ~~Commission~~Division finds that -

- 33 (1) The individual has registered for work at and thereafter has continued to  
 34 report at an employment office as directed by the ~~Commission in accordance~~  
 35 ~~with such regulations as the Commission may prescribe;~~Division pursuant to  
 36 rules adopted by the Division.

37 ...

- 38 (3) The individual is able to work, and is available for work: Provided that,  
 39 unless temporarily excused by ~~Commission regulations,~~Division rules, no  
 40 individual shall be deemed available for work unless he establishes to the  
 41 satisfaction of the ~~Commission~~Division that ~~he the individual~~ is actively  
 42 seeking work: Provided further, that an individual customarily employed in  
 43 seasonal employment shall, during the period of nonseasonal operations,  
 44 show to the satisfaction of the ~~Commission~~Division that ~~such the~~ individual  
 45 is actively seeking employment which ~~such the individual is qualified able~~ to  
 46 perform ~~by past experience or training~~ during such nonseasonal period:  
 47 Provided further, however, that no individual shall be considered available  
 48 for work for any week not to exceed two in any calendar year in which the  
 49 ~~Commission~~Division finds that his unemployment is due to a vacation. In  
 50 administering this proviso, benefits shall be paid or denied on a payroll-week  
 51 basis as established by the employing unit. A week of unemployment due to



1 a vacation as provided herein means any payroll week within which the  
2 equivalent of three customary full-time working days consist of a vacation  
3 period. For the purpose of this subdivision, any unemployment which is  
4 caused by a vacation period and which occurs in the calendar year following  
5 that within which the vacation period begins shall be deemed to have  
6 occurred in the calendar year within which such vacation period begins. For  
7 purposes of this subdivision, no individual shall be deemed available for  
8 work during any week that the individual tests positive for a controlled  
9 substance if (i) the test is a controlled substance examination administered  
10 under Article 20 of Chapter 95 of the General Statutes, (ii) the test is  
11 required as a condition of hire for a job, and (iii) the job would be suitable  
12 work for the claimant. The employer shall report to the ~~Commission,~~  
13 Division, in accordance with ~~regulations adopted by the Commission, rules~~  
14 adopted by the Division, each claimant that tests positive for a controlled  
15 substance under this subdivision. An unemployed individual shall not be  
16 disqualified for eligibility for unemployment compensation solely on the  
17 basis that the individual is in school. For the purposes of this subdivision:

- 18 a. No individual shall be deemed to be available for work during any  
19 week that the person is incarcerated or has received notice to report  
20 or is otherwise detained in any state or federal jail or penal  
21 institution.  
22 b. An individual is exempted for any week that the individual  
23 participates in the Trade Jobs For Success initiative under  
24 G.S. 143B-438.16.

25 ...

26 (c) Beginning February 16, 1977, an unemployed individual shall be eligible to receive  
27 benefits with respect to any week only if the ~~Commission-Division~~ finds that he has been  
28 totally, partially, or part-totally unemployed for a waiting period of one week with respect to  
29 each benefit year. No week shall be counted as a week of unemployment for waiting-period  
30 credit under this provision unless the claimant except for the provisions of this subdivision was  
31 otherwise eligible for benefits. As to claims filed on or after September 5, 1999, the waiting  
32 period for a benefit year shall not be required of any claimant if all of the following conditions  
33 are met:

34 ...

- 35 (4) The claimant files for a waiver of the waiting period week within 30 days  
36 after the date of notification or mailing of the notice of the right to have the  
37 waiting period week waived. The ~~Employment Security Commission,~~  
38 Division, for good cause shown, may at any time in its discretion, with or  
39 without motion or notice, order the period enlarged if the request for an  
40 enlargement of time is made before the expiration of the period originally  
41 prescribed or as extended by a previous order. After expiration of the  
42 specified period, the ~~Employment Security Commission-Division~~ may  
43 permit the act to be done where the failure to act was a result of excusable  
44 neglect.

45 The benefits paid as a result of the waiver of the waiting period week  
46 shall not be charged to the account or accounts of the base period employer  
47 or employers in accordance with G.S. 96-9(c)(2)d. The ~~Employment~~  
48 Security Commission-Division shall implement regulations prescribing the  
49 procedure for the waiver of the waiting period week in accordance with  
50 G.S. 96-4(b).

1 (c1) As to claims filed on or after January 29, 2003, the waiting period for a benefit year  
2 shall not be required of a claimant if all of the following conditions are met:

3 ...

4 (3) The Governor has issued an Executive Order directing and authorizing the  
5 ~~Employment Security Commission Division~~ to waive the waiting week for  
6 employees of the manufacturer.

7 (4) The ~~Employment Security Commission Division~~ shall implement  
8 regulations prescribing the procedure for the waiver of the waiting period  
9 week in accordance with G.S. 96-4(b).

10 (d) Benefit entitlement based on services for governmental entities that become subject  
11 to ~~the Employment Security Commission law Law~~ effective January 1, 1978, will be  
12 administered in the same manner and under the same conditions of the laws of this Chapter as  
13 are applicable to individuals whose benefit rights are based on other service subject to this  
14 Chapter.

15 ...

16 (g) (1) Except as herein provided, no individual shall be eligible for benefits for any  
17 week during any part of which the ~~Commission Division~~ finds that work was not available to  
18 the individual because he had been placed on a bona fide disciplinary suspension by his  
19 employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which  
20 constitute fault on the part of the employee and are connected with the work but such acts or  
21 omissions need not alone be disqualifying under G.S. 96-14.

22 ...."

23 **SECTION 2.15.** G.S. 96-14 reads as rewritten:

24 **"§ 96-14. Disqualification for benefits.**

25 An individual shall be disqualified for benefits:

26 (1) For the duration of his unemployment beginning with the first day of the  
27 first week after the disqualifying act occurs with respect to which week an  
28 individual files a claim for benefits if it is determined by the ~~Commission~~  
29 ~~Division~~ that such individual is, at the time such claim is filed, unemployed  
30 because he left work without good cause attributable to the employer.

31 Where an individual is discharged or leaves work due solely to a  
32 disability incurred or other health condition, whether or not related to the  
33 work, he shall not be disqualified for benefits if the individual shows:

34 a. That, at the time of leaving, an adequate disability or health condition  
35 of the employee, of a minor child who is in the legally recognized  
36 custody of the individual, of an aged or disabled parent of the  
37 individual, or of a disabled member of the individual's immediate  
38 family, either medically diagnosed or otherwise shown by competent  
39 evidence, existed to justify the leaving; and

40 b. That, at a reasonable time prior to leaving, the individual gave the  
41 employer notice of the disability or health condition.

42 Where an employee is notified by the employer that such  
43 employee will be separated from employment on some future date  
44 and the employee leaves work prior to this date because of the  
45 impending separation, the employee shall be deemed to have left  
46 work voluntarily and the leaving shall be without good cause  
47 attributable to the employer. However, if the employee shows to the  
48 satisfaction of the ~~Commission Division~~ that it was impracticable or  
49 unduly burdensome for the employee to work until the announced  
50 separation date, the permanent disqualification imposed for leaving  
51 work without good cause attributable to the employer may be

1 reduced to the greater of four weeks or the period running from the  
 2 beginning of the week during which the claim for benefits was made  
 3 until the end of the week of the announced separation date.

4 An employer's placing an individual on a bona fide disciplinary  
 5 suspension of 10 or fewer consecutive calendar days shall not  
 6 constitute good cause for leaving work.

7 ...  
 8 (1e) For the duration of an individual's unemployment, beginning with the first  
 9 day of the first week after the disqualifying act occurs with respect to which  
 10 week an individual files a claim for benefits, if it is determined by the  
 11 ~~Commission~~ Division that such individual is, at the time such claim is filed,  
 12 unemployed because the individual, without good cause attributable to the  
 13 employer and after receiving notice from the employer, refused to return to  
 14 work for a former employer when recalled within four weeks from a layoff,  
 15 or when recalled in any week in which the work search requirements under  
 16 G.S. 96-13 have been waived. As used in this subsection, the term "layoff"  
 17 means a temporary separation from work due to no work available for the  
 18 individual at the time of separation from work and the individual is retained  
 19 on the employer's payroll and is a continuing employee subject to recall by  
 20 the employer.

21 ...  
 22 (2) For the duration of the individual's unemployment beginning with the first  
 23 day of the first week after the disqualifying act occurs with respect to which  
 24 week an individual files a claim for benefits if it is determined by the  
 25 ~~Commission~~ Division that such individual is, at the time such claim is filed,  
 26 unemployed because he or she was discharged for misconduct connected  
 27 with the work. Misconduct connected with the work is defined as  
 28 intentional acts or omissions evincing disregard of an employer's interest or  
 29 standards of behavior which the employer has a right to expect or has  
 30 explained orally or in writing to an employee or evincing carelessness or  
 31 negligence of such degree as to manifest equal disregard. ~~conduct evincing~~  
 32 ~~such willful or wanton disregard of an employer's interest as is found in~~  
 33 ~~deliberate violations or disregard of standards of behavior which the~~  
 34 ~~employer has the right to expect of an employee, or in carelessness or~~  
 35 ~~negligence of such degree or recurrence as to manifest equal culpability,~~  
 36 ~~wrongful intent or evil design, or to show an intentional and substantial~~  
 37 ~~disregard of the employer's interests or of the employee's duties and~~  
 38 ~~obligations to the employer.~~

39 "Discharge for misconduct with the work" as used in this section is  
 40 defined to include but not be limited to separation initiated by an employer  
 41 for violating the employer's written alcohol or illegal drug policy; reporting  
 42 to work significantly impaired by alcohol or illegal drugs; consuming  
 43 alcohol or illegal drugs on employer's premises; conviction by a court of  
 44 competent jurisdiction for manufacturing, selling, or distribution of a  
 45 controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2)  
 46 while in the employ of said employer. ~~employer; being terminated or~~  
 47 ~~suspended from employment after arrest or conviction for an offense~~  
 48 ~~involving violence, sex crimes, illegal drugs, or other activities which could~~  
 49 ~~negatively affect the employer's reputation in the community or business~~  
 50 ~~dealings; any physical violence whatsoever related to an employee's work~~  
 51 ~~for an employer, including, but not limited to, physical violence directed at~~

1 supervisors, subordinates, coworkers, vendors, customers, or the general  
2 public; inappropriate comments or behavior towards supervisors,  
3 subordinates, coworkers, vendors, customers, or to the general public  
4 relating to any federally protected characteristic which creates a hostile work  
5 environment; theft in connection with the employment; forging or falsifying  
6 any document or data related to employment, including a previously  
7 submitted application for employment; violation of an employer's written  
8 absenteeism policy; refusing to perform reasonably assigned work tasks; and  
9 the failure to adequately perform any other employment duties as evidenced  
10 by no fewer than three written reprimands received in the 12 months  
11 immediately preceding the employee's termination. This phrase does not  
12 include discharge or employer-initiated separation of a severely disabled  
13 veteran, as defined in G.S. 96-8, for ~~acts or omissions~~ any act or omission  
14 of the veteran that the ~~Commission~~ Division determines are attributed to a  
15 disability incurred or aggravated in the line of duty during active military  
16 service, or to the veteran's absence from work to obtain care and treatment of  
17 a disability incurred or aggravated in the line of duty during active military  
18 service.

19 (2a) For a period of not less than four nor more than 13 weeks beginning with the  
20 first day of the first week during which or after the disqualifying act occurs  
21 with respect to which week an individual files a claim for benefits if it is  
22 determined by the ~~Commission~~ Division that such individual is, at the time  
23 the claim is filed, unemployed because he was discharged for substantial  
24 fault on his part connected with his work not rising to the level of  
25 misconduct. Substantial fault is defined to include those acts or omissions of  
26 employees over which they exercised reasonable control and which violate  
27 reasonable requirements of the job but shall not include (1) minor infractions  
28 of rules unless such infractions are repeated after a warning was received by  
29 the employee, (2) inadvertent mistakes made by the employee, nor (3)  
30 failures to perform work because of insufficient skill, ability, or equipment.  
31 Upon a finding of discharge under this subsection, the individual shall be  
32 disqualified for a period of nine weeks unless, based on findings by the  
33 ~~Commission~~ Division of aggravating or mitigating circumstances, the  
34 period of disqualification is lengthened or shortened within the limits set out  
35 above. The length of the disqualification so set by the ~~Commission~~ Division  
36 shall not be disturbed by a reviewing court except upon a finding of plain  
37 error.

38 (2b) For the duration of the individual's unemployment beginning with the first  
39 day of the first week during which or after the disqualifying act occurs with  
40 respect to which week an individual files a claim for benefits if it is  
41 determined by the ~~Commission~~ Division that the individual is, at the time  
42 such claim is filed, unemployed because the individual has been discharged  
43 from employment because a license, certificate, permit, bond, or surety that  
44 is necessary for the performance of the individual's employment and that the  
45 individual is responsible to supply has been revoked, suspended, or  
46 otherwise lost to the individual, or the individual's ability to successfully  
47 apply or the individual's application therefor has been lost or denied for a  
48 cause that was within the individual's power to control, guard against, or  
49 prevent. No showing of misconduct connected with the work or substantial  
50 fault connected with the work not rising to the level of misconduct shall be

1 required in order for an individual to be disqualified for benefits under this  
2 subdivision.

3 (2c) Discharge or employer-initiated separation of a severely disabled veteran, as  
4 defined in G.S. 96-8, for acts or omissions of the veteran that the  
5 ~~Commission~~ Division determines are attributed to a disability incurred or  
6 aggravated in the line of duty during active military service, or to the  
7 veteran's absence from work to obtain care and treatment of a disability  
8 incurred or aggravated in the line of duty during active military service, shall  
9 not disqualify the veteran from receiving benefits under the substantial fault  
10 provisions of subdivision (2a) of this section for any period of time.

11 (3) For the duration of his unemployment beginning with the first day of the  
12 first week in which the disqualifying act occurs if it is determined by the  
13 ~~Commission~~ Division that such individual has failed without good cause (i)  
14 to apply for available suitable work when so directed by the employment  
15 office of the ~~Commission~~; Division; or (ii) to accept suitable work when  
16 offered him; or (iii) to return to his customary self-employment (if any)  
17 when so directed by the ~~Commission~~. Division. Provided further, an  
18 otherwise eligible individual who is attending a vocational school or training  
19 program which has been approved by the ~~Commission~~ Division for such  
20 individual shall not be denied benefits because he refuses to apply for or  
21 accept suitable work during such period of training.

22 In determining whether or not any work is suitable for an individual, the  
23 ~~Commission~~ Division shall consider the degree of risk involved to his health,  
24 safety, and morals, his physical fitness and prior training, his experience and  
25 prior earnings, his length of unemployment and prospects for securing local  
26 work in his customary occupation, and the distance of the available work  
27 from his residence.

28 Notwithstanding any other provisions of this Chapter, no work shall be  
29 deemed suitable and benefits shall not be denied under this Chapter to any  
30 otherwise eligible individual for refusing to accept new work under any of  
31 the following conditions:

- 32 a. If the position offered is vacant due directly to a strike, lockout, or  
33 other labor dispute;
- 34 b. If the remuneration, hours, or other conditions of the work offered  
35 are substantially less favorable to the individual than those prevailing  
36 for similar work in the locality;
- 37 c. If as a condition of being employed the individual would be required  
38 to join a company union or to resign from or refrain from joining any  
39 bona fide labor organization;
- 40 d. If the position offered is full-time work and the individual meets the  
41 part-time worker requirements of G.S. 96-13(a)(6).

42 (4) For the duration of his unemployment beginning with the first day of the  
43 first week after the disqualifying act occurs with respect to which week an  
44 individual files a claim for benefits if it is determined by the ~~Commission~~  
45 Division that:

- 46 a. Such individual has failed without good cause to attend a vocational  
47 school or training program when so directed by the ~~Commission~~;  
48 Division;
- 49 b. Such individual has discontinued his training course without good  
50 cause; or

- 1 c. If the individual is separated from his training course or vocational
- 2 school due to misconduct.
- 3 (5) For any week with respect to which the ~~Commission~~-Division finds that his
- 4 total or partial unemployment is caused by a labor dispute in active progress
- 5 on or after July 1, 1961, at the factory, establishment, or other premises at
- 6 which he is or was last employed or caused after such date by a labor dispute
- 7 at another place within this State which is owned or operated by the same
- 8 employing unit which owns or operates the factory, establishment, or other
- 9 premises at which he is or was last employed and which supplies materials
- 10 or services necessary to the continued and usual operation of the premises at
- 11 which he is or was last employed. Provided, that an individual disqualified
- 12 under the provisions of this subdivision shall continue to be disqualified
- 13 thereunder after the labor dispute has ceased to be in active progress for such
- 14 period of time as is reasonably necessary and required to physically resume
- 15 operations in the method of operating in use at the plant, factory, or
- 16 establishment of the employing unit.
- 17 (6) If the ~~Commission~~-Division finds he is customarily self-employed and can
- 18 reasonably return to self-employment.
- 19 (6a) For the duration of his unemployment beginning with the first day of the
- 20 first week during which or after the disqualifying act occurs with respect to
- 21 which week an individual files a claim for benefits if it is determined by the
- 22 ~~Commission~~-Division that the individual is, at the time the claim is filed,
- 23 unemployed because the individual's ownership share of the employing
- 24 entity was voluntarily sold and, at the time of the sale:
- 25 a. The employing entity was a corporation and the individual held five
- 26 percent (5%) or more of the outstanding shares of the voting stock of
- 27 the corporation;
- 28 b. The employing entity was a partnership, limited or general, and the
- 29 individual was a limited or general partner; or
- 30 c. The employing entity was a proprietorship, and the individual was a
- 31 proprietor.
- 32 ...
- 33 (8) For any week with respect to which he has received any sum from the
- 34 employer pursuant to an order of any court, the National Labor Relations
- 35 Board, any other lawfully constituted adjudicative agency, or by private
- 36 agreement, consent or arbitration for loss of pay by reason of discharge.
- 37 When the amount so paid by the employer is in a lump sum and covers a
- 38 period of more than one week, such amount shall be allocated to the weeks
- 39 in the period on such a pro rata basis as the ~~Commission~~-Division may adopt
- 40 and if the amount so prorated to a particular week would, if it had been
- 41 earned by the claimant during that week of unemployment, have resulted in
- 42 a reduced benefit payment as provided in G.S. 96-12, the claimant shall be
- 43 entitled to receive such reduced payment if the claimant was otherwise
- 44 eligible.
- 45 Further provided, any benefits previously paid for weeks of
- 46 unemployment with respect to which back pay awards, or other such
- 47 compensation, are made shall constitute an overpayment of benefits and
- 48 such amounts shall be deducted from the award by the employer prior to
- 49 payment to the employee, and shall be transmitted promptly (or within 5
- 50 days) to the ~~Commission~~-Division by the employer for application against
- 51 the overpayment. Provided, however, the removal of any charges made

1 against the employer as a result of such previously paid benefits shall be  
2 applied to the calendar year in which the overpayment is transmitted to the  
3 ~~Commission, Division~~, and no attempt shall be made to relate such a credit  
4 to the period to which the award applies. Any amount of overpayment so  
5 deducted by the employer and not transmitted to the ~~Commission-Division~~  
6 or the failure of an employer to deduct an overpayment shall be subject to  
7 the same procedures for collection as is provided for contributions by  
8 G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection  
9 of overpayments of U. I. benefits, and it shall be construed accordingly.

10 ...

- 11 (10) Any employee disqualified for the duration of his unemployment due to the  
12 provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent  
13 disqualification removed if he meets the following three conditions:  
14 a. Returns to work for at least five weeks and is paid cumulative wages of  
15 at least 10 times his weekly benefit amount;  
16 b. Subsequently becomes unemployed through no fault of his own; and  
17 c. Meets the availability requirements of the law.

18 Any time certain disqualification imposed by the provisions of  
19 subsections (1), (1D), and (2A) shall be removed by serving the  
20 disqualification imposed as provided by this subsection.

21 Provided for good cause shown the ~~Commission-Division~~ in its  
22 discretion may as to any permanent disqualification provided in this Chapter  
23 reduce the disqualification period to a time certain but not less than five  
24 weeks. The maximum amount of benefits due any individual whose  
25 permanent disqualification is changed to a time certain shall be reduced by  
26 an amount determined by multiplying the number of weeks of  
27 disqualification by the weekly benefit amount.

28 Provided further, any permanent disqualification pursuant to the  
29 provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the  
30 effective date of the beginning of said disqualification.

31 ...

- 32 (12) Notwithstanding any other provision of this Chapter, no otherwise eligible  
33 individual shall be denied benefits for any weeks if it is determined by the  
34 ~~Commission-Division~~ that such individual is, at the time such claim is filed,  
35 unemployed because he left work solely as a result of a lack of work caused  
36 by the bankruptcy of his employer."

37 **SECTION 2.16.** G.S. 96-15 reads as rewritten:

38 **"§ 96-15. Claims for benefits.**

39 (a) Filing. – Claims for benefits shall be made in accordance with such regulations as  
40 the ~~Commission-Division~~ may prescribe. Employers may file claims for employees through the  
41 use of automation in the case of partial unemployment. Each employing unit shall post and  
42 maintain in places readily accessible to individuals performing services for it printed  
43 statements, concerning benefit rights, claims for benefits, and such other matters relating to the  
44 administration of this Chapter as the ~~Commission-Division~~ may direct. Each employing unit  
45 shall supply to such individuals copies of such printed statements or other materials relating to  
46 claims for benefits as the ~~Commission-Division~~ may direct. Such printed statements and other  
47 materials shall be supplied by the ~~Commission-Division~~ to each employing unit without cost to  
48 the employing unit.

- 49 (b) (1) Initial Determination. – A representative designated by the ~~Commission~~  
50 ~~Division~~ shall promptly examine the claim and shall determine whether or  
51 not the claim is valid. If the claim is determined to be not valid for any

1 reason other than lack of base period earnings, the claim shall be referred to  
2 an Adjudicator for a decision as to the issues presented. If the claim is  
3 determined to be valid, a monetary determination shall be issued showing  
4 the week with respect to when benefits shall commence, the weekly benefit  
5 amount payable, and the potential maximum duration thereof. The claimant  
6 shall be furnished a copy of such monetary determination showing the  
7 amount of wages paid him by each employer during his base period and the  
8 employers by whom such wages were paid, his benefit year, weekly benefit  
9 amount, and the maximum amount of benefits that may be paid to him for  
10 unemployment during the benefit year. When a claim is not valid due to lack  
11 of earnings in his base period, the determination shall so designate. The  
12 claimant shall be allowed 10 days from the earlier of mailing or delivery of  
13 his monetary determination to him within which to protest his monetary  
14 determination and upon the filing of such protest, unless said protest be  
15 satisfactorily resolved, the claim shall be referred to the ~~Chief Deputy~~  
16 ~~Commissioner Assistant Secretary~~ or his designee for a decision as to the  
17 issues presented. All base period employers, as well as the most recent  
18 employer of a claimant on a temporary layoff, shall be notified upon the  
19 filing of a claim which establishes a benefit year.

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

- 27 (2) Adjudication. – When a protest is made by the claimant to the initial or  
28 monetary determination, or a question or issue is raised or presented as to the  
29 eligibility of a claimant under G.S. 96-13, or whether any disqualification  
30 should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant  
31 to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator  
32 may consider any matter, document or statement deemed to be pertinent to  
33 the issues, including telephone conversations, and after such consideration  
34 shall render a conclusion as to the claimant's benefit entitlements. The  
35 adjudicator shall notify the claimant and all other interested parties of the  
36 conclusion reached. The conclusion of the adjudicator shall be deemed the  
37 final decision of the ~~Commission Division~~ unless within ~~45~~30 days after the  
38 date of notification or mailing of the conclusion, whichever is earlier, a  
39 written appeal is filed pursuant to ~~such regulations as the Commission may~~  
40 ~~adopt. The Commission rules adopted by the Division.~~ The Division shall be  
41 deemed an interested party for such purposes and may remove to itself or  
42 transfer to an appeals referee the proceedings involving any claim pending  
43 before an adjudicator.

44 Provided, any interested employer shall be allowed ~~40~~30 days from the  
45 earlier of mailing or delivery of the notice of the filing of a claim against the  
46 employer's account to protest the claim and have the claim referred to an  
47 adjudicator for a decision on the question or issue raised. A copy of the  
48 notice of the filing shall be sent contemporaneously to the employer by  
49 telefacsimile transmission if a fax number is on file. Provided further, no  
50 question or issue may be raised or presented by the ~~Commission Division~~ as  
51 to the eligibility of a claimant under G.S. 96-13, or whether any



1 disqualification should be imposed under G.S. 96-14, after 45 days from the  
2 first day of the first week after the question or issue occurs with respect to  
3 which week an individual filed a claim for benefits. None of the provisions  
4 of this subsection shall have the force and effect nor shall the same be  
5 construed or interpreted as repealing any other provisions of G.S. 96-18.

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

10 (c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee  
11 or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be  
12 heard. The conduct of hearings shall be governed by suitable ~~regulations established rules~~  
13 adopted by the ~~Commission-Division~~. The ~~regulations rules~~ need not conform to common law  
14 or statutory rules of evidence or technical or formal rules of procedure but shall provide for the  
15 conduct of hearings in such manner as to ascertain the substantial rights of the parties. The  
16 hearings may be conducted by conference telephone call or other similar means provided that if  
17 any party files with the ~~Commission-Division~~ prior written objection to the telephone  
18 procedure, that party will be afforded an opportunity for an in-person hearing at such place in  
19 the State as the ~~Commission-Division~~ by ~~regulation rule~~ shall provide. The hearing shall be  
20 scheduled for a time that, as much as practicable, least intrudes on and reasonably  
21 accommodates the ordinary business activities of an employer and the return to employment of  
22 a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the  
23 adjudicator or issue a new decision in which findings of fact and conclusions of law will be set  
24 out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute  
25 the appeal after having been duly notified of the appeals hearing. The evidence taken at the  
26 hearings before the appeals referee shall be recorded and the decision of the appeals referee  
27 shall be deemed to be the final decision of the ~~Commission-Division~~ unless within 10 days after  
28 the date of notification or mailing of the decision, whichever is earlier a written appeal is filed  
29 pursuant to such ~~regulations rules~~ as the ~~Commission-Board of Review and the Division~~ may  
30 adopt. No person may be appointed as an appeals referee or hearing officer unless he or she  
31 possesses the minimum qualifications necessary to be a staff attorney eligible for designation  
32 by the ~~Commission-Division~~ as a hearing officer under ~~G.S. 96-4(m)~~. ~~G.S. 96-4(q)~~. No appeals  
33 referee or hearing officer in full-time permanent status may engage in the private practice of  
34 law as defined in G.S. 84-2.1 while serving in office as appeals ~~referee; referee or hearing~~  
35 officer; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken  
36 from a decision of the appeals ~~referee; referee or hearing officer~~; the appealing party shall  
37 submit a clear written statement containing the grounds for the appeal within the time allowed  
38 by law for taking the appeal, and if such timely statement is not submitted, the ~~Commission~~  
39 Board of Review may dismiss the appeal.

40 (c1) Unless required for disposition of an ex parte matter authorized by law, a  
41 ~~Commissioner, the Division, appeals referee, or employee assigned to make a decision or to~~  
42 make findings of facts and conclusions of law in a case shall not communicate, directly or  
43 indirectly, in connection with any issue of fact, or question of law, with any person or party or  
44 his representative, except on notice and opportunity for parties to participate.

45 (c2) Whenever a party is notified of ~~an Adjudicator's, Appeals Referee's, or Deputy~~  
46 ~~Commissioner's the Board of Review's or a hearing officer's~~ decision by mail, G.S. 1A-1, Rule  
47 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

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

49 (d1) No continuance shall be granted except upon application to the ~~Commissioner,~~  
50 Division, the appeals referee, or other authority assigned to make the decision in the matter to  
51 be continued. A continuance may be granted only for good cause shown and upon such terms

1 and conditions as justice may require. Good cause for granting a continuance shall include, but  
2 not be limited to, those instances when a party to the proceeding, a witness, or counsel of  
3 record has an obligation of service to the State, such as service as a member of the North  
4 Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater  
5 jurisdiction.

6 (e) ~~Review by the Commission-Board of Review. – The Board of Review may on its~~  
7 ~~own motion affirm, modify, or set aside any decision of an appeals referee, hearing officer, or~~  
8 ~~other employee assigned to make a decision on the basis of the evidence previously submitted~~  
9 ~~in such case, or direct the taking of additional evidence, or may permit any of the parties to~~  
10 ~~such decision to initiate further appeals before it, or may provide for group hearings in such~~  
11 ~~cases as the Board of Review finds appropriate. The Board of Review may remove itself or~~  
12 ~~transfer to an appeals referee, hearing officer, or other employee assigned to make a decision~~  
13 ~~the proceedings on any claim pending before an appeals referee, hearing officer, or other~~  
14 ~~employee assigned to make a decision. Interested parties shall be promptly notified of the~~  
15 ~~findings and decision of the Board of Review. Commission or Deputy Commissioner may on~~  
16 ~~its own motion affirm, modify, or set aside any decision of an appeals referee on the basis of~~  
17 ~~the evidence previously submitted in such case, or direct the taking of additional evidence, or~~  
18 ~~may permit any of the parties to such decision to initiate further appeals before it, or may~~  
19 ~~provide for group hearings in such cases as the Commission or Deputy Commissioner may~~  
20 ~~deem proper. The Commission or Deputy Commissioner may remove to itself or transfer to~~  
21 ~~another appeals referee the proceedings on any claim pending before an appeals referee. The~~  
22 ~~Commission shall promptly notify the interested parties of its findings and the decision. In all~~  
23 ~~Commission matters heard by a Deputy Commissioner, the decision of the Deputy~~  
24 ~~Commissioner shall constitute the decision of the Commission; except, the Commission may~~  
25 ~~remove unto itself, upon its own motion, any claim pending for rehearing and redetermination,~~  
26 ~~provided such removal is done prior to the expiration of appeal period applicable to the~~  
27 ~~decision of the Deputy Commissioner.~~

28 (f) Procedure. – The manner in which disputed claims shall be presented, the reports  
29 thereon required from the claimant and from employers, and the conduct of hearings and  
30 appeals shall be in accordance with ~~regulations prescribed by the Commission rules adopted by~~  
31 ~~the Division~~ for determining the rights of the parties, whether or not such regulations conform  
32 to common-law or statutory rules of evidence and other technical rules of procedure. All  
33 testimony at any hearing before an appeals referee upon a disputed claim shall be recorded  
34 unless the ~~recording is waived by all interested parties, the parties have waived the evidentiary~~  
35 ~~hearing and entered into a stipulation resolving the issues pending before the appeals referee,~~  
36 ~~hearing officer, or other employee assigned to make the decision,~~ but need not be transcribed  
37 unless the disputed claim is further appealed and, one or more of the parties objects, under such  
38 ~~regulations as the Commission may prescribe, rules as the Division may adopt,~~ to being  
39 provided a copy of the tape recording of the hearing. Any other provisions of this Chapter  
40 notwithstanding, any individual receiving the transcript shall pay to the ~~Commission-Division~~  
41 such reasonable fee for the transcript as the ~~Commission-Division~~ may by regulation provide.  
42 The fee so prescribed by the ~~Commission-Division~~ for a party shall not exceed the lesser of  
43 sixty-five cents (65¢) per page or sixty-five dollars (\$65.00) per transcript. The ~~Commission~~  
44 ~~Division~~ may by regulation provide for the fee to be waived in such circumstances as it in its  
45 sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by  
46 such proofs as are required in G.S. 1-110, the ~~Commission-Division~~ shall waive the fee.

47 (g) Witness Fees. – Witnesses subpoenaed pursuant to this section shall be allowed fees  
48 at a rate fixed by the ~~Commission-Division~~. Such fees and all expenses of proceedings  
49 involving disputed claims shall be deemed a part of the expense of administering this Chapter.

50 (h) Judicial Review. – Any decision of the ~~Commission-Division~~, in the absence of  
51 judicial review as herein provided, or in the absence of an interested party filing a request for

1 reconsideration, shall become final 30 days after the date of notification or mailing thereof,  
2 whichever is earlier. Judicial review shall be permitted only after a party claiming to be  
3 aggrieved by the decision has exhausted his remedies before the ~~Commission-Division~~ as  
4 provided in this Chapter and has filed a petition for review in the superior court of the county in  
5 which he resides or has his principal place of business. The petition for review shall explicitly  
6 state what exceptions are taken to the decision or procedure of the ~~Commission-Division~~ and  
7 what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the  
8 petitioner shall serve copies of the petition by personal service or by certified mail, return  
9 receipt requested, upon the ~~Commission-Division~~ and upon all parties of record to the  
10 ~~Commission-Division~~ proceedings. Names and addresses of the parties shall be furnished to the  
11 petitioner by the ~~Commission-Division~~ upon request. The ~~Commission-Division~~ shall be  
12 deemed to be a party to any judicial action involving any of its decisions and may be  
13 represented in the judicial action by any qualified attorney who has been designated by it for  
14 that purpose. ~~Upon motion of the Commission, the court shall dismiss any review for which the~~  
15 ~~petition is untimely filed, untimely or improperly served, or for which it otherwise fails to~~  
16 ~~comply with the requirements of this subsection. Any questions regarding the requirements of~~  
17 ~~this subsection concerning the service or filing of a petition shall be determined by the superior~~  
18 ~~court. Any party to the Commission-Division proceeding may become a party to the review~~  
19 ~~proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any~~  
20 ~~person aggrieved may petition to become a party by filing a motion to intervene as provided in~~  
21 ~~G.S. 1A-1, Rule 24.~~

22 Within 45 days after receipt of the copy of the petition for review or within such additional  
23 time as the court may allow, the ~~Commission-Division~~ shall transmit to the reviewing court the  
24 original or a certified copy of the entire record of the proceedings under review. With the  
25 permission of the court the record may be shortened by stipulation of all parties to the review  
26 proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by  
27 the court for such additional cost as is occasioned by the refusal. The court may require or  
28 permit subsequent corrections or additions to the record when deemed desirable.

29 (i) Review Proceedings. – If a timely petition for review has been filed and served as  
30 provided in G.S. 96-15(h), the court may make party defendant any other party it deems  
31 necessary or proper to a just and fair determination of the case. The ~~Commission-Division~~ may,  
32 in its discretion, certify to the reviewing court questions of law involved in any decision by it.  
33 In any judicial proceeding under this section, the findings of fact by the ~~Commission-Division~~,  
34 if there is any competent evidence to support them and in the absence of fraud, shall be  
35 conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions  
36 and the questions so certified shall be heard in a summary manner and shall be given  
37 precedence over all civil cases. An appeal may be taken from the judgment of the superior  
38 court, as provided in civil cases. The ~~Commission-Division~~ shall have the right to appeal to the  
39 appellate division from a decision or judgment of the superior court and for such purpose shall  
40 be deemed to be an aggrieved party. No bond shall be required of the ~~Commission-Division~~  
41 upon appeal. Upon the final determination of the case or proceeding, the ~~Commission-Division~~  
42 shall enter an order in accordance with the determination. When an appeal has been entered to  
43 any judgment, order, or decision of the court below, no benefits shall be paid pending a final  
44 determination of the cause, except in those cases in which the final decision of the ~~Commission~~  
45 ~~Division~~ allowed benefits.

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

47 (k) Irrespective of any other provision of this Chapter, the ~~Commission-Division~~ may  
48 adopt minimum regulations necessary to provide for the payment of benefits to individuals  
49 promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42  
50 U.S.C.A., section 503(a)(1))."

51 **SECTION 2.17.** G.S. 96-16 reads as rewritten:

1 **"§ 96-16. Seasonal pursuits.**

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

11 (b) Upon application therefor by a pursuit, the ~~Commission~~-Division shall determine or  
12 redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods  
13 thereof. The ~~Commission~~-Division may, on its own motion, redetermine the active period or  
14 periods of a seasonal pursuit. An application for a seasonal determination must be made on  
15 forms prescribed by the ~~Commission~~-Division and must be made at least 20 days prior to the  
16 beginning date of the period of production operations for which a determination is requested.

17 (c) Whenever the ~~Commission~~-Division has determined or redetermined a pursuit to be  
18 seasonal, such pursuit shall be notified immediately, and such notice shall contain the  
19 beginning and ending dates of the pursuit's active period or periods. Such pursuits shall display  
20 notices of its seasonal determination conspicuously on its premises in a sufficient number of  
21 places to be available for inspection by its workers. Such notices shall be furnished by the  
22 ~~Commission~~-Division.

23 ...

24 (j) As used in this section:

25 ...

26 (5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its  
27 active period or periods. The ~~Commission~~-Division may prescribe by  
28 regulation the manner in which seasonal wages shall be reported.

29 ...."

30 **SECTION 2.18.** G.S. 96-17 reads as rewritten:

31 **"§ 96-17. Protection of rights and benefits; attorney representation; prohibited fees;  
32 deductions for child support obligations.**

33 ...

34 (b) Representation. – Any claimant or employer who is a party to any proceeding before  
35 the ~~Commission~~-Division may be represented by (i) an attorney; or (ii) any person who is  
36 supervised by an attorney, however, the attorney need not be present at any proceeding before  
37 the ~~Commission~~-Division.

38 (b1) Fees Prohibited. – Except as otherwise provided in this Chapter, no individual  
39 claiming benefits in any administrative proceeding under this Chapter shall be charged fees of  
40 any kind by the ~~Commission~~-Division or its representative, and in any court proceeding under  
41 this Chapter each party shall bear its own costs and legal fees.

42 ...

43 (d) (1) Definitions. – For the purpose of this subsection and when used herein:

44 a. "Unemployment compensation" means any compensation found by  
45 the ~~Commission~~-Division to be payable to an unemployed individual  
46 under the Employment Security Law of North Carolina (including  
47 amounts payable by the ~~Commission~~-Division pursuant to an  
48 agreement under any federal law providing for compensation,  
49 assistance or allowances with respect to unemployment) provided,  
50 that nothing in this subsection shall be construed to limit the  
51 ~~Commission's~~-Division's ability to reduce or withhold benefits,

1 otherwise payable, under authority granted elsewhere in this Chapter  
2 including but not limited to reductions for wages or earnings while  
3 unemployed and for the recovery of previous overpayments of  
4 benefits.

5  
6 (2) a. ...

7 An individual filing a new claim for unemployment compensation  
8 shall, at the time of filing such claim, disclose whether the individual  
9 owes child support obligations, as defined under subparagraph (1)b.  
10 of this subsection. If any such individual discloses that he or she  
11 owes child support obligations and is determined by the ~~Commission~~  
12 Division to be eligible for payment of unemployment compensation,  
13 the ~~Commission~~Division shall notify the State or local child support  
14 enforcement agency enforcing such obligation that such individual  
15 has been determined to be eligible for payment of unemployment  
16 compensation.

17 b. Upon payment by the State or local child support enforcement  
18 agency of the processing fee provided for in paragraph (4) of this  
19 subsection and beginning with any payment of unemployment  
20 compensation that, except for the provisions of this subsection,  
21 would be made to the individual during the then current benefit year  
22 and more than five working days after the receipt of the processing  
23 fee by the ~~Commission~~Division, the ~~Commission~~Division shall  
24 deduct and withhold from any unemployment compensation  
25 otherwise payable to an individual who owes child support  
26 obligations:

- 27 1. The amount specified by the individual to the ~~Commission~~  
28 Division to be deducted and withheld under this paragraph if  
29 neither subparagraph 2. nor subparagraph 3. of this paragraph  
30 is applicable; or
- 31 2. The amount, if any, determined pursuant to an agreement  
32 submitted to the ~~Commission~~Division under section  
33 454(20)(B)(i) of the Social Security Act by the State or local  
34 child support enforcement agency, unless subparagraph 3. of  
35 this paragraph is applicable; or
- 36 3. Any amount otherwise required to be so deducted and  
37 withheld from such unemployment compensation pursuant to  
38 properly served legal process, as that term is defined in  
39 section 462(e) of the Social Security Act.

40 c. Any amount deducted and withheld under paragraph b. of this  
41 subdivision shall be paid by the ~~Employment Security Commission~~  
42 Division to the appropriate State or local child support enforcement  
43 agency.

44 d. The Department of Health and Human Services and the ~~Commission~~  
45 Division are hereby authorized to enter into one or more agreements  
46 which may provide for the payment to the ~~Commission~~Division of  
47 the processing fees referred to in subparagraph b. and the payment to  
48 the Department of Health and Human Services of unemployment  
49 compensation benefits withheld, referred to in subparagraph c., on an  
50 open account basis. Where such an agreement has been entered into,  
51 the processing fee shall be deemed to have been made and received  
(for the purposes of fixing the date on which the ~~Commission~~

1 Division will begin withholding unemployment compensation  
 2 benefits) on the date a written authorization from the Department of  
 3 Health and Human Services to charge its account is received by the  
 4 ~~Commission~~ Division. Such an authorization shall apply to all  
 5 processing fees then or thereafter (within the then current benefit  
 6 year) chargeable with respect to any individual name in the  
 7 authorization. Any agreement shall provide for the reimbursement to  
 8 the ~~Commission~~ Division of any start-up costs and the cost of  
 9 providing notice to the Department of Health and Human Services of  
 10 any disclosure required by subparagraph a. Such an agreement may  
 11 dispense with the notice requirements of subparagraph a. by  
 12 providing for a suitable substitute procedure, reasonably calculated to  
 13 discover those persons owing child support obligations who are  
 14 eligible for unemployment compensation payments.

- 15 ...
- 16 (4) a. On or before April 1 of 1983 and each calendar year thereafter, the  
 17 ~~Commission~~ Division shall set and forward to the Secretary of Health  
 18 and Human Services for use in the next fiscal year, a schedule of  
 19 processing fees for the withholding and payment of unemployment  
 20 compensation as provided for in this subsection, which fees shall  
 21 reflect its best estimate of the administrative cost to the ~~Commission~~  
 22 Division generated thereby.
- 23 b. At least 20 days prior to September 25, 1982, the ~~Commission~~  
 24 Division shall set and forward to the Secretary of Health and Human  
 25 Services an interim schedule of fees which will be in effect until July  
 26 1, 1983.
- 27 c. The provisions of this subsection apply only if arrangements are  
 28 made for reimbursement by the State or local child support agency  
 29 for all administrative costs incurred by the ~~Commission~~ Division  
 30 under this subsection attributable to child support obligations  
 31 enforced by the agency."

32 **SECTION 2.19.** G.S. 96-18 reads as rewritten:

33 **"§ 96-18. Penalties.**

34 ...

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

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

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

- 4 (1) Any employing units employing more than 10 employees.
- 5 (2) A contribution of more than two thousand dollars (\$2,000) has not been  
6 paid.
- 7 (3) An experience rating account balance is more than five thousand dollars  
8 (\$5,000) overdrawn.

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

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

17 ...

- 18 (g) (1) Any person who, under subsection (e) above, has been held ineligible for  
19 benefits and who, because of those same acts or omissions has received any  
20 sum as benefits under this Chapter to which ~~he~~the person was not entitled,  
21 shall be liable to repay any such sum to the ~~Commission~~Division as  
22 provided in subparagraph (3) below, provided no such recovery or  
23 recoupment of such sum may be initiated after 10 years from the last day of  
24 the year in which the overpayment occurred.
- 25 (2) Any person who has received any sum as benefits under this Chapter by  
26 reason of the nondisclosure or misrepresentation by him or by another of a  
27 material fact (irrespective of whether such nondisclosure or  
28 misrepresentation was known or fraudulent) or has been paid benefits to  
29 which he was not entitled for any reason (including errors on the part of any  
30 representative of the ~~Commission~~Division) other than subparagraph (1)  
31 above shall be liable to repay such sum to the ~~Commission~~Division as  
32 provided in subparagraph (3) below, provided no such recovery or  
33 recoupment of such sum may be initiated after three years from the last day  
34 of the year in which the overpayment occurred.
- 35 (3) The ~~Commission~~Division may collect the overpayments provided for in this  
36 subsection by one or more of the following procedures as the ~~Commission~~  
37 Division may, except as provided herein, in its sole discretion choose:
  - 38 a. If, after due notice, any overpaid claimant shall fail to repay the sums  
39 to which he was not entitled, the amount due may be collected by  
40 civil action in the name of the ~~Commission~~Division, and the cost of  
41 such action shall be taxed to the claimant. Civil actions brought  
42 under this section to collect overpayments shall be heard by the court  
43 at the earliest possible date and shall be entitled to preference upon  
44 the calendar of the court over all other civil actions except petitions  
45 for judicial review under this Chapter.
  - 46 b. If any overpayment recognized by this subsection shall not be repaid  
47 within 30 days after the claimant has received notice and demand for  
48 same, and after due notice and reasonable opportunity for hearing (if  
49 a hearing on the merits of the claim has not already been had) the  
50 ~~Commission~~Division, under the hand of ~~its Chairman~~the Assistant  
51 Secretary, may certify the same to the clerk of the superior court of

1 the county in which the claimant resides or has property, and  
2 additional copies of said certificate for each county in which the  
3 ~~Commission~~ Division has reason to believe such claimant has  
4 property located; such certificate and/or copies thereof so forwarded  
5 to the clerk of the superior court shall immediately be docketed and  
6 indexed on the cross index of judgments, and from the date of such  
7 docketing shall constitute a preferred lien upon any property which  
8 said claimant may own in said county, with the same force and effect  
9 as a judgment rendered by the superior court. The ~~Commission~~  
10 Division shall forward a copy of said certificate to the sheriff or  
11 sheriffs of such county or counties, or to a duly authorized agent of  
12 the ~~Commission~~ Division, and when so forwarded and in the hands  
13 of such sheriff or agent of the ~~Commission~~ Division, shall have all  
14 the force and effect of an execution issued to such sheriff or agent of  
15 the ~~Commission~~ Division by the clerk of the superior court upon a  
16 judgment of the superior court duly docketed in said county. The  
17 ~~Commission~~ Division is further authorized and empowered to issue  
18 alias copies of said certificate or execution to the sheriff or sheriffs of  
19 such county or counties, or a duly authorized agent of the  
20 ~~Commission~~ Division in all cases in which the sheriff or duly  
21 authorized agent has returned an execution or certificate unsatisfied;  
22 when so issued and in the hands of the sheriff or duly authorized  
23 agent of the ~~Commission~~ Division, such alias shall have all the force  
24 and effect of an alias execution issued to such sheriff or duly  
25 authorized agent of the ~~Commission~~ Division by the clerk of the  
26 superior court upon a judgment of the superior court duly docketed in  
27 said county. Provided, however, that notwithstanding any provision  
28 of this subsection, upon filing one written notice with the  
29 ~~Commission~~ Division, the sheriff of any county shall have the sole  
30 and exclusive right to serve all executions and make all collections  
31 mentioned in this subsection and in such case, no agent of the  
32 ~~Commission~~ Division shall have the authority to serve any  
33 executions or make any collections therein in such county. A return  
34 of such execution or alias execution, shall be made to the  
35 ~~Commission~~ Division, together with all moneys collected  
36 thereunder, and when such order, execution or alias is referred to the  
37 agent of the ~~Commission~~ Division for service, the said agent of the  
38 ~~Commission~~ Division shall be vested with all the powers of the  
39 sheriff to the extent of serving such order, execution or alias and  
40 levying or collecting thereunder. The agent of the ~~Commission~~  
41 Division to whom such order or execution is referred shall give a  
42 bond not to exceed three thousand dollars (\$3,000) approved by the  
43 ~~Commission~~ Division for the faithful performance of such duties.  
44 The liability of said agent shall be in the same manner and to the  
45 same extent as is now imposed on sheriffs in the service of  
46 execution. If any sheriff of this State or any agent of the ~~Commission~~  
47 Division who is charged with the duty of serving executions shall  
48 willfully fail, refuse or neglect to execute any order directed to him  
49 by the said ~~Commission~~ Division and within the time provided by  
50 law, the official bond of such sheriff or of such agent of the  
51 ~~Commission~~ Division shall be liable for the overpayments and costs



- 1 due by the claimant. Additionally, the ~~Commission~~Division or its  
2 designated representatives in the collection of overpayments shall  
3 have the powers enumerated in G.S. 96-10(b)(2) and (3).
- 4 c. Any person who has been found by the ~~Commission~~Division to have  
5 been overpaid under subparagraph (1) above shall be liable to have  
6 such sums deducted from future benefits payable to him under this  
7 Chapter.
- 8 d. Any person who has been found by the ~~Commission~~Division to have  
9 been overpaid under subparagraph (2) above shall be liable to have  
10 such sums deducted from future benefits payable to him under this  
11 Chapter in such amounts as the ~~Commission~~Division may by  
12 regulation prescribe but no such benefit payable for any week shall  
13 be reduced by more than fifty percent (50%) of that person's weekly  
14 benefit amount.
- 15 e. To the extent permissible under the laws and Constitution of the  
16 United States, the ~~Commission~~Division is authorized to enter into or  
17 cooperate in arrangements or reciprocal agreements with appropriate  
18 and duly authorized agencies of other states or the United States  
19 Secretary of Labor, or both, whereby: (1) Overpayments of  
20 unemployment benefits as determined under subparagraphs (1) and  
21 (2) above shall be recovered by offset from unemployment benefits  
22 otherwise payable under the unemployment compensation law of  
23 another state, and overpayments of unemployment benefits as  
24 determined under the unemployment compensation law of such other  
25 state shall be recovered by offset from unemployment benefits  
26 otherwise payable under this Chapter; and, (2) Overpayments of  
27 unemployment benefits as determined under applicable federal law,  
28 with respect to benefits or allowances for unemployment provided  
29 under a federal program administered by this State under an  
30 agreement with the United States Secretary of Labor, shall be  
31 recovered by offset from unemployment benefits otherwise payable  
32 under this Chapter or any such federal program, or under the  
33 unemployment compensation law of another state or any such federal  
34 unemployment benefit or allowance program administered by such  
35 other state under an agreement with the United States Secretary of  
36 Labor if such other state has in effect a reciprocal agreement with the  
37 United States Secretary of Labor as authorized by Section 303(g)(2)  
38 of the federal Social Security Act, if the United States agrees, as  
39 provided in the reciprocal agreement with this State entered into  
40 under such Section 303(g)(2) of the Social Security Act, that  
41 overpayments of unemployment benefits as determined under  
42 subparagraphs (1) and (2) above, and overpayment as determined  
43 under the unemployment compensation law of another state which  
44 has in effect a reciprocal agreement with the United States Secretary  
45 of Labor as authorized by Section 303(g)(2) of the Social Security  
46 Act, shall be recovered by offset from benefits or allowances for  
47 unemployment otherwise payable under a federal program  
48 administered by this State or such other state under an agreement  
49 with the United States Secretary of Labor.
- 50 f. The ~~Commission~~Division may in its discretion decline to collect  
51 overpayments to claimants if the claimant has deceased after the

1 payment was made. In such a case the ~~Commission~~Division may  
2 remove the debt of the deceased claimant from its records."

3 **SECTION 2.20.** G.S. 96-19 reads as rewritten:

4 "**§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or**  
5 **invalidation of federal acts; suspension of enforcement provisions contested.**

6 (a) It is the purpose of this Chapter to secure for employers and employees the benefits  
7 of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to  
8 credit on payment of federal taxes, of State contributions, the receipt of federal grants for  
9 administrative purposes, and all other provisions of the said Federal Social Security Act; and it  
10 is intended as a policy of the State that this Chapter and its requirements for contributions by  
11 employers shall continue in force only so long as such employers are required to pay the federal  
12 taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title  
13 III and Title IX of the said Federal Social Security Act shall be declared invalid by the United  
14 States Supreme Court, or if such law be repealed by congressional action so that the federal tax  
15 cannot be further levied, from and after the declaration of such invalidity by the United States  
16 Supreme Court, or the repeal of said law by congressional action, as the case may be, no further  
17 levy or collection of contributions shall be made hereunder. The enactment by the Congress of  
18 the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance  
19 Act shall in no way affect the administration of this law except as herein expressly provided.

20 All federal grants and all contributions theretofore collected, and all funds in the treasury by  
21 virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far as may be possible,  
22 under the terms of this Chapter: Provided, however, that contributions already due from any  
23 employer shall be collected and paid into the said fund, subject to such distribution; and  
24 provided further, that the personnel of the ~~State Employment Security Commission~~Division of  
25 Employment Security shall be reduced as rapidly as possible.

26 The funds remaining available for use by the ~~North Carolina Employment Security~~  
27 ~~Commission~~Division of Employment Security shall be expended, as necessary, in making  
28 payment of all such awards as have been made and are fully approved at the date aforesaid, and  
29 the payment of the necessary costs for the further administration of this Chapter, and the final  
30 settlement of all affairs connected with same. After complete payment of all administrative  
31 costs and full payment of all awards made as aforesaid, any and all moneys remaining to the  
32 credit of any employer shall be refunded to such employer, or his duly authorized assignee:  
33 Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and  
34 transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the former  
35 Employment Security Commission of North Carolina, and that is now part of the Division of  
36 Employment Security of the North Carolina Department of Commerce, shall in such event  
37 return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of  
38 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on  
39 the duties therein prescribed; but, pending a final settlement of the affairs of the ~~Employment~~  
40 ~~Security Commission of North Carolina, Division,~~ the said State employment service shall  
41 render such service in connection therewith as shall be demanded or required under the  
42 provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

43 (b) The ~~Employment Security Commission~~Division of Employment Security may,  
44 upon receiving notification from the U.S. Department of Labor that any provision of this  
45 Chapter is out of conformity with the requirements of the federal law or of the U.S. Department  
46 of Labor, suspend the enforcement of the contested section or provision until the North  
47 Carolina Legislature next has an opportunity to make changes in the North Carolina law. The  
48 ~~Employment Security Commission shall,~~Division shall, in order to implement the above  
49 suspension:

- 50 (1) Notify the Governor's office and provide that office with a copy of the  
51 determination or notification of the U.S. Department of Labor;

- 1 (2) Advise the Governor's office as to whether the contested portion or provision  
2 of the law would, if not enforced, so seriously hamper the operations of the  
3 agency as to make it advisable that a special session of the legislature be  
4 called;
- 5 (3) Take all reasonable steps available to obtain a reprieve from the  
6 implementation of any federal conformity failure sanctions until the State  
7 legislature has been afforded an opportunity to consider the existing  
8 conflict."

9 **SECTION 2.21.** G.S. 96-20 reads as rewritten:

10 **"§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director;  
11 employees.**

12 The ~~Employment Service Division of the Employment Security Commission~~ Employment  
13 Security Section of the Division of Employment Security, Department of Commerce, shall  
14 establish and maintain free public employment offices in such number and in such places as  
15 may be necessary for the proper administration of this Chapter, and for the purpose of  
16 performing such duties as are within the purview of the act of Congress entitled "An act to  
17 provide for the establishment of a national employment system and for cooperation with the  
18 states in the promotion of such system and for other purposes," approved June 6, 1933, (48  
19 Stat., 113; U.S.C., Title 29, section 49(c), as amended). The said Division shall be administered  
20 by a full-time salaried director. The ~~Employment Security Commission Division~~ shall be  
21 charged with the duty to cooperate with any official or agency of the United States having  
22 powers or duties under the provisions of the said act of Congress, as amended, and to do and  
23 perform all things necessary to secure to this State the benefits of the said act of Congress, as  
24 amended, in the promotion and maintenance of a system of public employment offices. The  
25 provisions of the said act of Congress, as amended, are hereby accepted by this State, in  
26 conformity with section 4 of said act, and this State will observe and comply with the  
27 requirements thereof. The ~~Employment Security Commission Division~~ is hereby designated  
28 and constituted the agency of this State for the purpose of said act. The ~~Commission Secretary~~  
29 is directed to appoint the ~~director,~~ head, other officers, and employees of the Employment  
30 Service Division, Security Section."

31 **SECTION 2.22.** G.S. 96-21 reads as rewritten:

32 **"§ 96-21. Duties concerning veterans and worker profiling.**

33 The duties of the ~~Employment Service Division~~ Employment Security Section include the  
34 following:

- 35 ...
- 36 (2) To establish and use a worker profiling system that complies with 42 U.S.C.  
37 § 503(a)(10) to identify claimants for benefits whom the ~~Division Section~~  
38 must refer to reemployment services in accordance with that law."

39 **SECTION 2.23.** G.S. 96-22 reads as rewritten:

40 **"§ 96-22. Employment of and assistance to minors.**

41 The ~~Employment Service Division~~ Security Section shall have jurisdiction over all matters  
42 contemplated in this Article pertaining to securing employment for all minors who avail  
43 themselves of the free employment service. The ~~Employment Service Division~~ Security  
44 Section shall have power to so conduct its affairs that at all times it shall be in harmony with  
45 laws relating to child labor and compulsory education; to aid in inducing minors over 16, who  
46 cannot or do not for various reasons attend day school, to undertake promising skilled  
47 employment; to aid in influencing minors who do not come within the purview of compulsory  
48 education laws, and who do not attend day school, to avail themselves of continuation or  
49 special courses in existing night schools, vocational schools, part-time schools, trade schools,  
50 business schools, library schools, university extension courses, etc., so as to become more  
51 skilled in such occupation or vocation to which they are respectively inclined or particularly

1 adapted, including assisting those minors who are interested in securing vocational employment  
2 in agriculture and to aid in the development of good citizenship and in the study and  
3 development of vocational rehabilitation capabilities for handicapped minors."

4 **SECTION 2.24.** G.S. 96-24 reads as rewritten:

5 **"§ 96-24. Local offices; cooperation with United States service; financial aid from United**  
6 **States.**

7 The Employment ~~Service Division~~ Security Section is authorized to enter into agreement  
8 with the governing authorities of any municipality, county, township, or school corporation in  
9 the State for such period of time as may be deemed desirable for the purpose of establishing  
10 and maintaining local free employment offices, and for the extension of vocational guidance in  
11 cooperation with the United States Employment Service, and under and by virtue of any such  
12 agreement as aforesaid to pay, from any funds appropriated by the State for the purposes of this  
13 Article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of  
14 offices and other expenses."

15 **SECTION 2.25.** G.S. 96-25 reads as rewritten:

16 **"§ 96-25. Acceptance and use of donations.**

17 It shall be lawful for the Employment ~~Service Division~~ Security Section to receive, accept,  
18 and use, in the name of the people of the State, or any community or municipal corporation, as  
19 the donor may designate, by gift or devise, any moneys, buildings, or real estate for the purpose  
20 of extending the benefits of this Article and for the purpose of giving assistance to handicapped  
21 citizens through vocational rehabilitation."

22 **SECTION 2.26.** G.S. 96-26 reads as rewritten:

23 **"§ 96-26. Cooperation of towns, townships, and counties with Division.**

24 It shall be lawful for the governing authorities of any municipality, county, township, or  
25 school corporation in the State to enter into cooperative agreement with the Employment  
26 ~~Service Division~~ Security Section and to appropriate and expend the necessary money upon  
27 such conditions as may be approved by the Employment ~~Service Division~~ Security Section and  
28 to permit the use of public property for the joint establishment and maintenance of such offices  
29 as may be mutually agreed upon, and which will further the purpose of this Article."

30 **SECTION 2.27.** G.S. 96-27 reads as rewritten:

31 **"§ 96-27. Method of handling employment service funds.**

32 All federal funds received by this State under the Wagner-Peyser Act (48 Stat. 113; Title  
33 29, U.S.C., section 49) as amended, and all State funds appropriated or made available to the  
34 Employment ~~Service Division~~ Security Section shall be paid into the Employment Security  
35 Administration Fund, and said moneys are hereby made available to the State employment  
36 service to be expended as provided in this Article and by said act of Congress. For the purpose  
37 of establishing and maintaining free public employment offices, ~~said Division~~ the Section is  
38 authorized to enter into agreements with any political subdivision of this State or with any  
39 private, nonprofit organization, and as a part of any such agreement the ~~Commission~~ Division  
40 may accept moneys, services, or quarters as a contribution to the Employment Security  
41 Administration Fund."

42 **SECTION 2.28.** G.S. 96-29 reads as rewritten:

43 **"§ 96-29. Openings listed by State agencies.**

44 Every State agency shall list with the ~~Employment Security Commission of North Carolina~~  
45 Division of Employment Security every job opening occurring within the agency which  
46 opening the agency wishes filled and which will not be filled solely by promotion or transfer  
47 from within the existing State government work force. The listing shall include a brief  
48 description of the duties and salary range and shall be filed with the ~~Commission~~ Division  
49 within 30 days after the occurrence of the opening. The State agency may not fill the job  
50 opening for at least 21 days after the listing has been filed with the ~~Commission~~ Division. The

1 listing agency shall report to the ~~Commission~~ Division the filling of any listed opening within  
2 15 days after the opening has been filled.

3 The ~~Employment Security Commission~~ Division may act to waive the 21-day listing period  
4 for job openings in job classifications declared to be in short supply by the State Personnel  
5 Commission, upon the request of a State agency, if the 21-day listing requirement for these  
6 classifications hinders the agency in providing essential services."

7 **SECTION 2.29.** G.S. 96-31 reads as rewritten:

8 **"§ 96-31. Definitions.**

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

- 10 (1) "CFS" means the common follow-up information management system  
11 developed by DES ~~the Employment Security Commission of North Carolina~~  
12 ~~as authorized under this Article.~~
- 13 (2) ~~"ESC" means the Employment Security Commission of North Carolina.~~  
14 "DES" means the Division of Employment Security.
- 15 (3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).
- 16 (4) "State job training, education, and placement program" or "State-funded  
17 program" means a program operated by a State or local government agency  
18 or entity and supported in whole or in part by State or federal funds, that  
19 provides job training and education or job placement services to program  
20 participants. The term does not include on-the-job training provided to  
21 current employees of the agency or entity for the purposes of professional  
22 development."

23 **SECTION 2.30.** G.S. 96-32 reads as rewritten:

24 **"§ 96-32. Common follow-up information management system created.**

25 (a) The ~~Employment Security Commission of North Carolina~~ DES shall develop,  
26 implement, and maintain a common follow-up information management system for tracking the  
27 employment status of current and former participants in State job training, education, and  
28 placement programs. The system shall provide for the automated collection, organization,  
29 dissemination, and analysis of data obtained from State-funded programs that provide job  
30 training and education and job placement services to program participants. In developing the  
31 system, the ~~ESC~~ DES shall ensure that data and information collected from State agencies is  
32 confidential, not open for general public inspection, and maintained and disseminated in a  
33 manner that protects the identity of individual persons from general public disclosure.

34 (b) The ~~ESC~~ DES shall adopt procedures and guidelines for the development and  
35 implementation of the CFS authorized under this section.

36 (c) Based on data collected under the CFS, the ~~ESC~~ DES shall evaluate the  
37 effectiveness of job training, education, and placement programs to determine if specific  
38 program goals and objectives are attained, to determine placement and completion rates for  
39 each program, and to make recommendations regarding the continuation of State funding for  
40 programs evaluated."

41 **SECTION 2.31.** G.S. 96-33 reads as rewritten:

42 **"§ 96-33. State agencies required to provide information and data.**

43 (a) Every State agency and local government agency or entity that receives State or  
44 federal funds for the direct or indirect support of State job training, education, and placement  
45 programs shall provide to the ~~Employment Security Commission of North Carolina~~ DES all  
46 data and information available to or within the agency or entity's possession requested by the  
47 ~~ESC~~ DES for input into the common follow-up information management system authorized  
48 under this Article.

49 (b) Each agency or entity required to report information and data to the ~~ESC~~ DES under  
50 this Article shall maintain true and accurate records of the information and data requested by  
51 the ~~ESC~~ DES. The records shall be open to ~~ESC~~ DES inspection and copying at reasonable

1 times and as often as necessary. Each agency or entity shall further provide, upon request by  
 2 ~~ES~~~~C~~~~D~~~~E~~~~S~~, sworn or unsworn reports with respect to persons employed or trained by the agency  
 3 or entity, as deemed necessary by the ~~ESC-DES~~ to carry out the purposes of this Article.  
 4 Information obtained by the ~~ES~~~~C~~~~D~~~~E~~~~S~~ from the agency or entity shall be held by ~~ESC-DES~~ as  
 5 confidential and shall not be published or open to public inspection other than in a manner that  
 6 protects the identity of individual persons and employers."

7 **SECTION 2.32.** G.S. 96-35 reads as rewritten:

8 "**§ 96-35. Reports on common follow-up system activities.**

9 (a) The ~~Employment Security Commission of North Carolina-DES~~ shall present  
 10 annually by May 1 to the General Assembly and to the Governor a report of CFS activities for  
 11 the preceding calendar year. The report shall include information on and evaluation of job  
 12 training, education, and placement programs for which data was reported by State and local  
 13 agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year  
 14 data.

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

18  
 19 **PART III. OTHER CONFORMING AMENDMENTS TO THE GENERAL STATUTES**

20 **SECTION 3.1.** G.S. 7A-343.1 reads as rewritten:

21 "**§ 7A-343.1. Distribution of copies of the appellate division reports.**

22 The Administrative Officer of the Courts shall, at the State's expense distribute such  
 23 number of copies of the appellate division reports to federal, State departments and agencies,  
 24 and to educational institutions of instruction, as follows:

25 Governor, Office of the	1
26 Lieutenant Governor, Office of the	1
27 Secretary of State, Department of the	2
28 State Auditor, Department of the	1
29 Treasurer, Department of the State	1
30 Superintendent of Public Instruction	1
31 Office of the Attorney General	11
32 State Bureau of Investigation	1
33 Agriculture and Consumer Services, Department of	1
34 Labor, Department of	1
35 Insurance, Department of	1
36 Budget Bureau, Department of Administration	1
37 Property Control, Department of Administration	1
38 State Planning, Department of Administration	1
39 Environment and Natural Resources, Department of	1
40 Revenue, Department of	1
41 Health and Human Services, Department of	1
42 Juvenile Justice and Delinquency Prevention, Department of	1
43 Commission for the Blind	1
44 Transportation, Department of	1
45 Motor Vehicles, Division of	1
46 Utilities Commission	8
47 Industrial Commission	11
48 State Personnel Commission	1
49 Office of State Personnel	1
50 Office of Administrative Hearings	2
51 Community Colleges, Department of	38

1	<del>Employment Security Commission</del>	4
2	<u>Department of Commerce</u>	1
3	Commission of Correction	1
4	Parole Commission	1
5	Archives and History, Division of	1
6	Crime Control and Public Safety, Department of	2
7	Cultural Resources, Department of	3
8	Legislative Building Library	2
9	Justices of the Supreme Court	1 ea.
10	Judges of the Court of Appeals	1 ea.
11	Judges of the Superior Court	1 ea.
12	Clerks of the Superior Court	1 ea.
13	District Attorneys	1 ea.
14	Emergency and Special Judges of the Superior Court	1 ea.
15	Supreme Court Library	AS MANY AS
16		REQUESTED
17	Appellate Division Reporter	1
18	University of North Carolina, Chapel Hill	71
19	University of North Carolina, Charlotte	1
20	University of North Carolina, Greensboro	1
21	University of North Carolina, Asheville	1
22	North Carolina State University, Raleigh	1
23	Appalachian State University	1
24	East Carolina University	1
25	Fayetteville State University	1
26	North Carolina Central University	17
27	Western Carolina University	1
28	Duke University	17
29	Davidson College	2
30	Wake Forest University	25
31	Lenoir Rhyne College	1
32	Elon College	1
33	Campbell University	25
34	Federal, Out-of-State and Foreign Secretary of State	1
35	Secretary of Defense	1
36	Secretary of Health, Education and Welfare	1
37	Secretary of Housing and Urban Development	1
38	Secretary of Transportation	1
39	Attorney General	1
40	Department of Justice	1
41	Internal Revenue Service	1
42	Veterans' Administration	1
43	Library of Congress	5
44	Federal Judges resident in North Carolina	1 ea.
45	Marshal of the United States Supreme Court	1
46	Federal District Attorneys resident in North Carolina	1 ea.
47	Federal Clerks of Court resident in North Carolina	1 ea.
48	Supreme Court Library exchange list	1
49	Cherokee Supreme Court, Eastern Band of Cherokee Indians	1
50		

1 Each justice of the Supreme Court and judge of the Court of Appeals shall receive for  
2 private use, one complete and up-to-date set of the appellate division reports. The copies of  
3 reports furnished each justice or judge as set out in the table above may be retained personally  
4 to enable the justice or judge to keep up-to-date the personal set of reports."

5 **SECTION 3.2.** G.S. 8-45.3(a1) reads as rewritten:

6 "(a1) The ~~Employment Security Commission~~ Division of Employment Security is hereby  
7 specifically authorized to have photographed, photocopied, or microphotocopied all records of  
8 the ~~Commission, Division,~~ including filings required by law to be made to the ~~Commission,~~  
9 Division, and said photographs, photocopies, or microphotocopies, when certified by the  
10 ~~Commission-Division~~ as true and correct photographs, photocopies, or microphotocopies, shall  
11 be as admissible in evidence in all actions, proceedings, and matters as the originals thereof  
12 would have been."

13 **SECTION 3.3.** G.S. 52C-5-501(a) reads as rewritten:

14 "(a) An income-withholding order issued in another state may be sent to the person or  
15 entity defined or identified as the obligor's employer under the income-withholding provisions  
16 of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a  
17 petition or comparable pleading or registering the order with a tribunal of this State. In the  
18 event that an obligor is receiving unemployment compensation benefits from ~~the North~~  
19 ~~Carolina Employment Security Commission,~~ the Division of Employment Security (DES) in  
20 accordance with G.S. 96-17, an income-withholding order issued in another state may be sent  
21 to the ~~Employment Security Commission-DES~~ without first filing a petition or comparable  
22 pleading or registering the order with a tribunal of this State. Upon receipt of the order, the  
23 employer or the ~~Employment Security Commission-DES~~ shall:

- 24 (1) Treat an income-withholding order issued in another state which appears  
25 regular on its face as if it had been issued by a tribunal of this State;
- 26 (2) Immediately provide a copy of the order to the obligor; and
- 27 (3) Distribute the funds as directed in the withholding order. The ~~Employment~~  
28 ~~Security Commission-DES~~ shall not withhold an amount to exceed  
29 twenty-five percent (25%) of the unemployment compensation benefits."

30 **SECTION 3.4.** G.S. 58-89A-120 reads as rewritten:

31 **"§ 58-89A-120. Unemployment taxes; payroll.**

32 A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and  
33 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and  
34 collection of unemployment insurance contributions or the assignment of discrete employer  
35 numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and  
36 96-8(6). The ~~Employment Security Commission-Department of Commerce, Division of~~  
37 Employment Security (DES), shall cooperate with the Commissioner in the investigation of  
38 applicants and licensees and shall provide the Commissioner with access to all relevant records  
39 and data in the custody of the ~~Employment Security Commission-DES.~~"

40 **SECTION 3.5.** G.S. 84-5(a) reads as rewritten:

41 "(a) It shall be unlawful for any corporation to practice law or appear as an attorney for  
42 any person in any court in this State, or before any judicial body or the North Carolina  
43 Industrial Commission, Utilities Commission, or the ~~Employment Security Commission,~~  
44 Department of Commerce, Division of Employment Security, or hold itself out to the public or  
45 advertise as being entitled to practice law; and no corporation shall organize corporations, or  
46 draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice,  
47 or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through  
48 any person orally or by advertisement, letter or circular. The provisions of this section shall be  
49 in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in  
50 this section shall be construed to prohibit a banking corporation authorized and licensed to act  
51 in a fiduciary capacity from performing any clerical, accounting, financial or business acts



1 required of it in the performance of its duties as a fiduciary or from performing ministerial and  
2 clerical acts in the preparation and filing of such tax returns as are so required, or from  
3 discussing the business and financial aspects of fiduciary relationships. Provided, however, this  
4 section shall not apply to corporations authorized to practice law under the provisions of  
5 Chapter 55B of the General Statutes of North Carolina.

6 To further clarify the foregoing provisions of this section as they apply to corporations  
7 which are authorized and licensed to act in a fiduciary capacity:

- 8 (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
- 9 a. Draw wills or trust instruments; provided that this shall not be  
10 construed to prohibit an employee of such corporation from  
11 conferring and cooperating with an attorney who is not a salaried  
12 employee of the corporation, at the request of such attorney, in  
13 connection with the attorney's performance of services for a client  
14 who desires to appoint the corporation executor or trustee or  
15 otherwise to utilize the fiduciary services of the corporation.
  - 16 b. Give legal advice or legal counsel, orally or written, to any customer  
17 or prospective customer or to any person who is considering  
18 renunciation of the right to qualify as executor or administrator or  
19 who proposes to resign as guardian or trustee, or to any other person,  
20 firm or corporation.
  - 21 c. Advertise to perform any of the acts prohibited herein; solicit to  
22 perform any of the acts prohibited herein; or offer to perform any of  
23 the acts prohibited herein.
- 24 (2) Except as provided in subsection (b) of this section, when any of the  
25 following acts are to be performed in connection with the fiduciary activities  
26 of such a corporation, said acts shall be performed for the corporation by a  
27 duly licensed attorney, not a salaried employee of the corporation, retained  
28 to perform legal services required in connection with the particular estate,  
29 trust or other fiduciary matter:
- 30 a. Offering wills for probate.
  - 31 b. Preparing and publishing notice of administration to creditors.
  - 32 c. Handling formal court proceedings.
  - 33 d. Drafting legal papers or giving legal advice to spouses concerning  
34 rights to an elective share under Article 1A of Chapter 30 of the  
35 General Statutes.
  - 36 e. Resolving questions of domicile and residence of a decedent.
  - 37 f. Handling proceedings involving year's allowances of widows and  
38 children.
  - 39 g. Drafting deeds, notes, deeds of trust, leases, options and other  
40 contracts.
  - 41 h. Drafting instruments releasing deeds of trust.
  - 42 i. Drafting assignments of rent.
  - 43 j. Drafting any formal legal document to be used in the discharge of the  
44 corporate fiduciary's duty.
  - 45 k. In matters involving estate and inheritance taxes, gift taxes, and  
46 federal and State income taxes:
    - 47 1. Preparing and filing protests or claims for refund, except  
48 requests for a refund based on mathematical or clerical errors  
49 in tax returns filed by it as a fiduciary.

- 1 2. Conferring with tax authorities regarding protests or claims
- 2 for refund, except those based on mathematical or clerical
- 3 errors in tax returns filed by it as a fiduciary.
- 4 3. Handling petitions to the tax court.
- 5 l. Performing legal services in insolvency proceedings or before a
- 6 referee in bankruptcy or in court.
- 7 m. In connection with the administration of an estate or trust:
- 8 1. Making application for letters testamentary or letters of
- 9 administration.
- 10 2. Abstracting or passing upon title to property.
- 11 3. Handling litigation relating to claims by or against the estate
- 12 or trust.
- 13 4. Handling foreclosure proceedings of deeds of trust or other
- 14 security instruments which are in default.
- 15 (3) When any of the following acts are to be performed in connection with the
- 16 fiduciary activities of such a corporation, the corporation shall comply with
- 17 the following:
- 18 a. The initial opening and inventorying of safe deposit boxes in
- 19 connection with the administration of an estate for which the
- 20 corporation is executor or administrator shall be handled by, or with
- 21 the advice of, an attorney, not a salaried employee of the corporation,
- 22 retained by the corporation to perform legal services required in
- 23 connection with that particular estate.
- 24 b. The furnishing of a beneficiary with applicable portions of a testator's
- 25 will relating to such beneficiary shall, if accompanied by any legal
- 26 advice or opinion, be handled by, or with the advice of, an attorney,
- 27 not a salaried employee of the corporation, retained by the
- 28 corporation to perform legal services required in connection with that
- 29 particular estate or matter.
- 30 c. In matters involving estate and inheritance taxes and federal and
- 31 State income taxes, the corporation shall not execute waivers of
- 32 statutes of limitations without the advice of an attorney, not a salaried
- 33 employee of the corporation, retained by the corporation to perform
- 34 legal services in connection with that particular estate or matter.
- 35 d. An attorney, not a salaried employee of the corporation, retained by
- 36 the corporation to perform legal services required in connection with
- 37 an estate or trust shall be furnished copies of inventories and
- 38 accounts proposed for filing with any court and proposed federal
- 39 estate and North Carolina inheritance tax returns and, on request,
- 40 copies of proposed income and intangibles tax returns, and shall be
- 41 afforded an opportunity to advise and counsel the corporate fiduciary
- 42 concerning them prior to filing."

**SECTION 3.6.** G.S. 95-25.3(d) reads as rewritten:

44 "(d) The Commissioner, in order to prevent curtailment of opportunities for employment  
 45 of the economically disadvantaged and the unemployed, may, by regulation, establish a wage  
 46 rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect  
 47 under subsection (a) which shall apply to all persons (i) who have been unemployed for at least  
 48 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are,  
 49 receiving Work First Family Assistance or who are receiving supplemental security benefits  
 50 under Title XVI of the Social Security Act.

1 Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for  
2 such subminimum wage shall be issued by the ~~Employment Security Commission~~Division of  
3 Employment Security.

4 The regulation issued by the Commissioner shall not permit employment at the  
5 subminimum rate for a period in excess of 52 weeks."

6 **SECTION 3.7.** G.S. 94-144(b) reads as rewritten:

7 "(b) A listing of employment by area and industry of employers who have an assigned  
8 account number by the ~~Employment Security Commission~~Department of Commerce, Division  
9 of Employment Security (DES), shall be supplied annually to the Commissioner by the  
10 ~~Employment Security Commission of this State~~DES. The listing of employment by area and  
11 industry shall contain at least the following: employer name; ~~Employment Security~~  
12 ~~Commission~~DES account number; indication of whether multiple or a single report unit;  
13 number of reporting units; average employment; establishment size code; geographical area;  
14 any four-digit code; and any other information deemed necessary by the ~~Commissioner~~  
15 Division to meet federal reporting requirements."

16 **SECTION 3.8.** G.S. 105-129.4(b) reads as rewritten:

17 "(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an  
18 enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average  
19 wage of the jobs for which the credit is claimed meets the wage standard and the average wage  
20 of all jobs at the location with respect to which the credit is claimed meets the wage standard.  
21 No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the  
22 credit for investing in machinery and equipment, the credit for research and development, or  
23 the credit for investing in real property for a central office or aircraft facility in a tier three,  
24 four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for  
25 the credit, the average wage of all jobs at the location with respect to which the credit is  
26 claimed meets the wage standard. In making the wage calculation, the taxpayer must include  
27 any positions that were filled for at least 1,600 hours during the calendar year the taxpayer  
28 engages in the activity that qualifies for the credit even if those positions are not filled at the  
29 time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar  
30 year, the taxpayer must use the wage standard for the calendar year in which the taxable year  
31 begins. No wage standard applies to credits for activities in an enterprise tier one or two area.  
32 For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential  
33 manufacturing process in which separate parts of the sequential manufacturing process are  
34 performed in different facilities within the same county, the term "location" may mean either  
35 the specific establishment or all facilities in the county in which parts of the process are  
36 performed.

37 Part-time jobs for which the taxpayer provides health insurance as provided in subsection  
38 (b2) of this section are considered to have an average weekly wage at least equal to the  
39 applicable percentage times the applicable average weekly wage for the county in which the  
40 jobs will be located. There may be a period of up to 100 days between the time at which an  
41 employee begins a part-time job and the time at which the taxpayer begins to provide health  
42 insurance for that employee.

43 Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one  
44 hundred ten percent (110%) of the applicable average weekly wage for the county in which the  
45 jobs will be located, as computed by the Secretary of Commerce from data compiled by the  
46 ~~Employment Security Commission~~Division of Employment Security for the most recent  
47 period for which data are available. The applicable average weekly wage is the lowest of the  
48 following: (i) the average wage for all insured private employers in the county, (ii) the average  
49 wage for all insured private employers in the State, and (iii) the average wage for all insured  
50 private employers in the county multiplied by the county income/wage adjustment factor. The  
51 county income/wage adjustment factor is the county income/wage ratio divided by the State

1 income/wage ratio. The county income/wage ratio is average per capita income in the county  
2 divided by the annualized average wage for all insured private employers in the county. The  
3 State income/wage ratio is the average per capita income in the State divided by the annualized  
4 average wage for all insured private employers in the State. The Department of Commerce  
5 must annually publish the wage standard for each county."

6 **SECTION 3.9.** G.S. 105-259(b)(9) and (9a) read as rewritten:

7 "(9) To furnish to the ~~Employment Security Commission~~ Division of  
8 Employment Security the name, address, and account and identification  
9 numbers of a taxpayer when the information is requested by the ~~Commission~~  
10 Division in order to fulfill a duty imposed under Article 2 of Chapter 96 of  
11 the General Statutes.

12 (9a) To furnish information to the ~~Employment Security Commission~~ Division of  
13 Employment Security to the extent required for its NC WORKS study of the  
14 working poor pursuant to G.S. 108A-29(r). The ~~Employment Security~~  
15 ~~Commission~~ Division of Employment Security shall use information  
16 furnished to it under this subdivision only in a nonidentifying form for  
17 statistical and analytical purposes related to its NC WORKS study. The  
18 information that may be furnished under this subdivision is the following  
19 with respect to individual income taxpayers, as shown on the North Carolina  
20 income tax forms:

- 21 a. Name, social security number, spouse's name, spouse's social  
22 security number, and county of residence.
- 23 b. Filing status and federal personal exemptions.
- 24 c. Federal taxable income, additions to federal taxable income, and total  
25 of federal taxable income plus additional income.
- 26 d. Income while a North Carolina resident, total income from North  
27 Carolina sources while a nonresident, and total income from all  
28 sources.
- 29 e. Exemption for children, nonresidents' and part-year residents'  
30 exemption for children, and credit for children.
- 31 f. Expenses for child and dependent care, portion of expenses paid  
32 while a resident of North Carolina, portion of expenses paid while a  
33 resident of North Carolina that was incurred for dependents who  
34 were under the age of seven and dependents who were physically or  
35 mentally incapable of caring for themselves, credit for child and  
36 dependent care expenses, other qualifying expenses, credit for other  
37 qualifying expenses, total credit for child and dependent care  
38 expenses."

39 **SECTION 3.10.** G.S. 105A-8(b) reads as rewritten:

40 "(b) Hearing. – A hearing on a contested claim of a State agency, except a constituent  
41 institution of The University of North Carolina or the ~~Employment Security Commission,~~  
42 Division of Employment Security, must be conducted in accordance with Article 3 of Chapter  
43 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The  
44 University of North Carolina must be conducted in accordance with administrative procedures  
45 approved by the Attorney General. A hearing on a contested claim of the ~~Employment Security~~  
46 ~~Commission~~ Division of Employment Security must be conducted in accordance with rules  
47 adopted by that ~~Commission~~ Division. A request for a hearing on a contested claim of any  
48 State agency must be filed within 30 days after the State agency mails the debtor notice of the  
49 proposed setoff. A request for a hearing is considered to be filed when it is delivered for  
50 mailing with postage prepaid and properly addressed. In a hearing under this section, an issue  
51 that has previously been litigated in a court proceeding cannot be considered.

1 If a debtor owes a debt to a State agency and the net proceeds credited to the State agency  
2 for the debt exceed the amount of the debt, the State agency must send the balance to the  
3 debtor. No part of the collection assistance fee retained by the Department may be returned  
4 when a debt is owed but it is less than the amount set off.

5 Interest accrues on the amount of a refund returned to a taxpayer under this subsection in  
6 accordance with G.S. 105-241.21. A State agency that returns a refund to a taxpayer under this  
7 subsection must pay from the State agency's funds any interest that has accrued since the fifth  
8 day after the Department mailed the notice of setoff to the taxpayer."

9 **SECTION 3.11.** G.S. 105A-9 reads as rewritten:

10 **"§ 105A-9. Appeals from hearings.**

11 Appeals from hearings allowed under this Chapter, other than those conducted by the  
12 ~~Employment Security Commission, Division of Employment Security,~~ shall be in accordance  
13 with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act,  
14 except that the place of initial judicial review shall be the superior court for the county in which  
15 the debtor resides. Appeals from hearings allowed under this Chapter that are conducted by the  
16 ~~Employment Security Commission of North Carolina Division of Employment Security~~ shall  
17 be in accordance with the provisions of Chapter 96 of the General Statutes."

18 **SECTION 3.12.** G.S. 108A-29 reads as rewritten:

19 **"§ 108A-29. Priority for employment services.**

20 (a) Repealed by Session Laws 2009-489, s. 12, effective August 26, 2009.

21 (b) Individuals seeking to apply or reapply for Work First Program assistance and who  
22 are not exempt from work requirements shall register with the ~~Employment Security~~  
23 ~~Commission Division of Employment Security~~ for employment services. The point of  
24 registration shall be at an office of the ~~Employment Security Commission Division~~ in the  
25 county in which the individual resides or at another location designated in a Memorandum of  
26 Understanding between the ~~Employment Security Commission Division~~ and the local  
27 department of social services.

28 ...

29 (f) Each county department of social services shall enter into a cooperative agreement  
30 with the local ~~Employment Security Commission Division~~ to operate the Job Search  
31 component on behalf of Work First Program registrants. The cooperative agreement shall  
32 include a provision for payment to the ~~Employment Security Commission Division~~ by the  
33 county department of social services for the cost of providing those services, not otherwise  
34 available to all clients of the ~~Employment Security Commission, Division,~~ described in this  
35 subsection as the same are reflected as a component of the County Plan payable from fund  
36 allocations in the county block grant. The county department of social services may also enter  
37 into a cooperative agreement with the community college system or any other entity to operate  
38 the Job Preparedness component. This cooperative agreement shall include a provision for  
39 payment to that entity by the county department of social services for the cost of providing  
40 those services, not otherwise available to all clients of the ~~Employment Security Commission,~~  
41 ~~Division,~~ described in this subsection as the same are reflected as a component of the County  
42 Plan payable from fund allocations in the county block grant.

43 (g) The ~~Employment Security Commission Division~~ shall further assist registrants  
44 through job search, job placement, or referral to community service, if contracted to do so.

45 (h) An individual placed in the Job Search component of the ~~Employment Security~~  
46 ~~Commission Division~~ or other agency providing Job Search services shall look for work and  
47 shall accept any suitable employment. If contracted, the ~~Employment Security Commission~~  
48 ~~Division~~ shall refer individuals to current job openings and shall make job development  
49 contacts for individuals. Individuals so referred shall be required to keep a record of their job  
50 search activities on a job search record form provided by the ~~Commission, Division,~~ and the  
51 ~~Employment Security Commission Division~~ will monitor these activities. A "job search record"

1 means a written list of dates, times, places, addresses, telephone numbers, names, and  
2 circumstances of job interviews. The Job Search component shall include at least one weekly  
3 contact with the ~~Employment Security Commission-Division~~. The ~~Employment Security~~  
4 ~~Commission-Division~~ shall adopt rules to accomplish this subsection.

5 (i) The ~~Employment Security Commission-Division~~ of Employment Security shall  
6 notify all employers in the State of the "Exclusive No-Fault" Referral Service available through  
7 the ~~Employment Security Commission-Division~~ of Employment Security to employers who  
8 hire personnel through Job Service referrals.

9 (j) All individuals referred to jobs through the ~~Employment Security Commission~~  
10 ~~Division of Employment Security~~ shall be instructed in the procedures for applying for the  
11 Federal Earned Income Credit (FEIC). All individuals referred to jobs through the ~~Employment~~  
12 ~~Security-Commission-Division~~ who qualify for the FEIC shall apply for the FEIC by filing a  
13 W-5 form with their employers.

14 ...

15 (l) The ~~Employment Security Commission-Division~~ of Employment Security shall  
16 work with the Department of Labor to develop a relationship with these private employment  
17 agencies to utilize their services and make referrals of individuals registered with the  
18 ~~Employment Security Commission-Division~~ of Employment Security.

19 ...

20 (n) If after evaluation of an individual the ~~Employment Security Commission-Division~~  
21 ~~of Employment Security~~ believes it necessary, the ~~Employment Security Commission-Division~~  
22 or the county department of social services also may refer an individual to a Job Preparedness  
23 provider. The local community college should include General Education Development, Adult  
24 Basic Education, or Human Resources Development programs that are already in existence as a  
25 part of the Job Preparedness component. Additionally, the ~~Commission-Division~~ or the county  
26 department of social services may refer an individual to a literacy council. Through a  
27 Memorandum of Understanding between the ~~Employment Security Commission-Division~~  
28 ~~of Employment Security~~, the local department of social services, and other contracted entities, a  
29 system shall be established to monitor an individual's progress through close communications  
30 with the agencies assisting the individual. The ~~Employment Security Commission-Division~~  
31 ~~of Employment Security~~ or Job Preparedness provider shall adopt rules to accomplish this  
32 subsection.

33 ...

34 (p) The ~~Employment Security Commission-Division~~ shall expand its Labor Market  
35 Information System. The expansion shall at least include: statistical information on  
36 unemployment rates and other labor trends by county; and publications dealing with licensing  
37 requirements, economic development, and career projections, and information technology  
38 systems which can be used to track participants through the employment and training process.

39 ...."

40 **SECTION 3.13.** G.S. 110-129.2(g)(1) reads as rewritten:

41 "(g) Other Uses of Directory Information. – The following agencies may access information  
42 entered into the Directory from employer reports for the purposes stated:

43 (1) The ~~Employment Security Commission-Division~~ of Employment Security  
44 for the purpose of administering employment security programs."

45 **SECTION 3.14.** G.S. 110-136.2 reads as rewritten:

46 "§ 110-136.2. Use of unemployment compensation benefits for child support.

47 ...

48 (b) Upon notification of a voluntary assignment by the Department of Health and  
49 Human Services, the ~~Employment Security Commission-Division~~ of Employment Security  
50 shall deduct and withhold the amount assigned by the responsible parent as provided in  
51 G.S. 96-17.

1 (c) Any amount deducted and withheld shall be paid by the ~~Employment Security~~  
2 ~~Commission-Division of Employment Security~~ to the Department of Health and Human  
3 Services for distribution as required by federal law.

4 (d) Voluntary assignment of unemployment compensation benefits shall remain  
5 effective until the ~~Employment Security Commission-Division of Employment Security~~  
6 receives notification from the Department of Health and Human Services of an express written  
7 revocation by the responsible parent.

8 ...

9 (f) In the absence of a voluntary assignment of unemployment compensation benefits,  
10 the Department of Health and Human Services shall implement income withholding as  
11 provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five  
12 percent (25%) of the unemployment compensation benefits. Notice of the requirement to  
13 withhold shall be served upon the ~~Employment Security Commission-Division~~ and payment  
14 shall be made by the ~~Employment Security Commission-Division~~ directly to the Department of  
15 Health and Human Services pursuant to G.S. 96-17 or to another state under G.S. 52C-5-501.  
16 Except for the requirement to withhold from unemployment compensation benefits and the  
17 forwarding of withheld funds to the Department of Health and Human Services or to another  
18 state under G.S. 52C-5-501, the ~~Employment Security Commission-Division~~ is exempt from  
19 the provisions of G.S. 110-136.8."

20 **SECTION 3.15.** G.S. 113-276(j) reads as rewritten:

21 "(j) A migrant farm worker who has in his possession a temporary certification of his  
22 status as such by the Rural Employment Service of the ~~North Carolina Employment Security~~  
23 ~~Commission-Division of Employment Security~~ on a form provided by the Wildlife Resources  
24 Commission is entitled to the privileges of a resident of the State and of the county indicated on  
25 such certification during the term thereof for the purposes of purchasing and using the resident  
26 fishing licenses provided by G.S. 113-271(d)(2), (4), and (6)a."

27 **SECTION 3.16.** G.S. 132-3(c) reads as rewritten:

28 "(c) Employment Security ~~Commission-Records~~. – Notwithstanding subsection (a) of  
29 this section and G.S. 121-5, when a record of the ~~Employment Security Commission-Division~~  
30 ~~of Employment Security~~ has been copied in any manner, the original record may be destroyed  
31 upon the order of the ~~Chairman of the Employment Security Commission-Division~~. If a record  
32 of the ~~Commission-that Division~~ has not been copied, the original record shall be preserved for  
33 at least three years. After three years the original record may be destroyed upon the order of the  
34 ~~Chairman of the Employment Security Commission-Assistant Secretary of Commerce~~."

35 **SECTION 3.17.** G.S. 135-16 reads as rewritten:

36 "**§ 135-16. Employees transferred to North Carolina State Employment Service by act of**  
37 **Congress.**

38 Notwithstanding any provision contained in this Chapter, any employee of the United  
39 States Employment Service who was transferred to and became employed by the State of North  
40 Carolina, or any of its agencies, on November 16, 1946, by virtue of Public Laws 549, 79th  
41 Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower  
42 Commission or the United States Employment Service between January 1, 1942, and  
43 November 15, 1946, shall be deemed to have been engaged in membership service as defined  
44 by this Chapter for any payroll period or periods between such dates: Provided, that any such  
45 employee or member on or before January 1, 1948, pays to the Board of Trustees for the  
46 benefit of the proper fund or account an amount equal to the accumulated contributions, with  
47 interest thereon, that such employee or member would have made during such period if he had  
48 been a member of the Retirement System with earnable compensation based on the salary  
49 received for such period and as limited by this Chapter: Provided, further that funds are made  
50 available by the United States Employment Service, or other federal agency, to the  
51 ~~Employment Security Commission-Division of Employment Security~~ for the payment of and

1 the ~~Employment Security Commission~~ Division of Employment Security pays to the Board of  
2 Trustees for the benefit of the proper fund a sum equal to the employer's contributions that  
3 would have been paid for such period for members or employees who pay the accumulated  
4 contributions provided in this section.

5 The Board of Trustees is authorized to adopt and issue all necessary rules and regulations  
6 for the purpose of administering and enforcing the provisions of this section."

7 **SECTION 3.18.** G.S. 138A-24(14)c. reads as rewritten:

8 "c. A covered person serving on, or a prospective appointee to, one of  
9 the following panels or boards:

- 10 1. Alcoholic Beverage Control Commission.
- 11 2. Coastal Resources Commission.
- 12 3. State Board of Education.
- 13 4. State Board of Elections.
- 14 5. ~~Employment Security Commission~~ Division of Employment  
15 Security.
- 16 6. Environmental Management Commission.
- 17 7. Industrial Commission.
- 18 8. State Personnel Commission.
- 19 9. Rules Review Commission.
- 20 10. Board of Transportation.
- 21 11. Board of Governors of the University of North Carolina.
- 22 12. Utilities Commission.
- 23 13. Wildlife Resources Commission."

24 **SECTION 3.19.** G.S. 143B-181 reads as rewritten:

25 "**§ 143B-181. Governor's Advisory Council on Aging – members; selection; quorum;**  
26 **compensation.**

27 The Governor's Advisory Council on Aging of the Department of Health and Human  
28 Services shall consist of 33 members, 29 members to be appointed by the Governor, two  
29 members to be appointed by the President Pro Tempore of the Senate, and two members to be  
30 appointed by the Speaker of the House of Representatives. The composition of the Council  
31 shall be as follows: one representative of the Department of Administration; one representative  
32 of the Department of Cultural Resources; one representative of the ~~Employment Security~~  
33 ~~Commission~~ Division of Employment Security; one representative of the Teachers' and State  
34 Employees' Retirement System; one representative of the Commissioner of Labor; one  
35 representative of the Department of Public Instruction; one representative of the Department of  
36 Environment and Natural Resources; one representative of the Department of Insurance; one  
37 representative of the Department of Crime Control and Public Safety; one representative of the  
38 Department of Community Colleges; one representative of the School of Public Health of The  
39 University of North Carolina; one representative of the School of Social Work of The  
40 University of North Carolina; one representative of the Agricultural Extension Service of North  
41 Carolina State University; one representative of the collective body of the Medical Society of  
42 North Carolina; and 19 members at large. The at large members shall be citizens who are  
43 knowledgeable about services supported through the Older Americans Act of 1965, as  
44 amended, and shall include persons with greatest economic or social need, minority older  
45 persons, and participants in programs under the Older Americans Act of 1965, as amended. The  
46 Governor shall appoint 15 members at large who meet these qualifications and are 60 years of  
47 age or older. The four remaining members at large, two of whom shall be appointed by the  
48 President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the  
49 House of Representatives, shall be broadly representative of the major private agencies and  
50 organizations in the State who are experienced in or have demonstrated particular interest in the  
51 special concerns of older persons. At least one of each of the at-large appointments of the



1 President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be  
2 persons 60 years of age or older. The Council shall meet at least quarterly.

3 Members at large shall be appointed for four-year terms and until their successors are  
4 appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

5 The Governor shall have the power to remove any member of the Council from office in  
6 accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

7 The Governor shall designate one member of the Council as chair to serve in such capacity  
8 at his pleasure.

9 Members of the Council shall receive per diem and necessary travel and subsistence  
10 expenses in accordance with the provisions of G.S. 138-5.

11 A majority of the Council shall constitute a quorum for the transaction of business.

12 All clerical and other services required by the Council shall be supplied by the Secretary of  
13 Health and Human Services."

14 **SECTION 3.20.** G.S. 143B-407(a) reads as rewritten:

15 "(a) The State Commission of Indian Affairs shall consist of two persons appointed by  
16 the General Assembly, the Secretary of Health and Human Services, the ~~Director of the~~  
17 ~~Employment Security Commission, Assistant Secretary of Commerce in charge of the Division~~  
18 of Employment Security; the Secretary of Administration, the Secretary of Environment and  
19 Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the  
20 Indian community. These Indian members shall be selected by tribal or community consent  
21 from the Indian groups that are recognized by the State of North Carolina and are principally  
22 geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern  
23 Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the  
24 Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the  
25 Waccamaw-Siouan from Columbus and Bladen Counties; the Sappony; the Occaneechi Band  
26 of the Saponi Nation of Alamance and Orange Counties, and the Native Americans located in  
27 Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The Coharie shall  
28 have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two; the Lumbees,  
29 three; the Meherrin, one; the Waccamaw-Siouan, two; the Sappony, one; the Cumberland  
30 County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina  
31 Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native  
32 American Society, one. Of the two appointments made by the General Assembly, one shall be  
33 made upon the recommendation of the Speaker, and one shall be made upon recommendation  
34 of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be  
35 made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with  
36 G.S. 120-122."

37 **SECTION 3.21.** G.S. 143B-417(1)bb. reads as rewritten:

38 "(1) To determine the number of student interns to be allocated to each of the  
39 following offices or departments:

40 ...

41 bb. ~~Employment Security Commission~~Division of Employment Security

42 ...."

43 **SECTION 3.22.** G.S. 143B-426.25(b)(7) reads as rewritten:

44 "(b) The North Carolina Farmworker Council shall consist of 13 members as follows:

45 ...

46 (7) ~~The Chairman of the Employment Security Commission Assistant Secretary~~  
47 of Commerce in charge of the Division of Employment Security or ~~his that~~  
48 officer's designee shall serve ex officio.

49 ...."

50 **SECTION 3.23.** G.S. 147-86.1 reads as rewritten:

51 "§ 147-86.1. Pool account for local government unemployment compensation.

1 (a) The State Treasurer is authorized to establish a pool account, in accordance with  
2 rules ~~and regulations~~ of the ~~Employment Security Commission, Division of Employment~~  
3 Security (DES), in cooperation with any one or more units of local government, for the purpose  
4 of reimbursing the ~~Employment Security Commission-DES~~ for unemployment benefits paid by  
5 the ~~Commission-DES~~ and chargeable to each local unit of government participating in the pool  
6 account. In the pool account established pursuant to this section, the funds contributed by a unit  
7 of local government shall remain the funds of the particular unit, and interest or other  
8 investment income earned by the pool account shall be prorated and credited to the various  
9 contributing local units on the basis of the amounts thereof contributed, figured according to an  
10 average periodic balance or some other sound accounting principle.

11 (b) The State Treasurer shall pay to the ~~Employment Security Commission, Division of~~  
12 Employment Security, within 25 days from receipt of a list thereof, all unemployment benefits  
13 charged by the ~~Commission-DES~~ to each unit of local government participating in the pool  
14 account from the funds in the pool account belonging to each such unit, to the extent that said  
15 funds are sufficient to do so.

16 (c) Notwithstanding the participation by a unit of local government in the pool account  
17 authorized by this section, such unit shall remain liable to the ~~Employment Security~~  
18 Commission-Division of Employment Security for any benefits duly charged by the  
19 ~~Commission-Division~~ to the unit which are not paid by the State Treasurer from funds in the  
20 pool account belonging to the unit. Notwithstanding its participation in the pool account, each  
21 unit of local government shall continue to maintain an individual account with the ~~Employment~~  
22 Security Commission-DES.

23 (d) The Director of the Budget shall be authorized to transfer from the interest earned  
24 on the pool account, to the State Treasurer's departmental budget, such funds as may be  
25 necessary to defray the Treasurer's cost of administering the pool account."

26 **SECTION 3.24.** G.S. 158-7.1(d2)(1) reads as rewritten:

27 "(d2) In arriving at the amount of consideration that it receives, the Board may take into  
28 account prospective tax revenues from improvements to be constructed on the property,  
29 prospective sales tax revenues to be generated in the area, as well as any other prospective tax  
30 revenues or income coming to the county or city over the next 10 years as a result of the  
31 conveyance or lease provided the following conditions are met:

- 32 (1) The governing board of the county or city shall determine that the  
33 conveyance of the property will stimulate the local economy, promote  
34 business, and result in the creation of a substantial number of jobs in the  
35 county or city that pay at or above the median average wage in the county or,  
36 for a city, in the county where the city is located. A city that spans more than  
37 one county is considered to be located in the county where the greatest  
38 population of the city resides. For the purpose of this subdivision, the  
39 median average wage in a county is the median average wage for all insured  
40 industries in the county as computed by the ~~Employment Security~~  
41 Commission-Department of Commerce, Division of Employment Security,  
42 for the most recent period for which data is available."

43 **SECTION 3.25.** G.S. 165-10 reads as rewritten:

44 "**§ 165-10. Transfer of veterans' activities.**

45 The Governor may transfer to the Department such funds, facilities, properties and  
46 activities now being held or administered by the State for the benefit of veterans, their families  
47 and dependents, as he may deem proper; provided, that the provisions of this section shall not  
48 apply to the activities of the ~~North Carolina Employment Security Commission-Department of~~  
49 Commerce, Division of Employment Security, in respect to veterans."

50  
51 **PART IV. REPORTING; OTHER MATTERS**

1           **SECTION 4.1.** By November 15, 2011, the Board of Review established by this  
2 act shall be appointed and the Department of Commerce shall assign staff to the Board.

3           **SECTION 4.2.** By June 30, 2012, the Secretary of the Department of Commerce  
4 shall make a detailed written report to the Joint Legislative Program Evaluation Oversight  
5 Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal  
6 Research Division on the consolidation of the Employment Security Commission into the  
7 Department of Commerce and on any changes the Secretary recommends to maintain the  
8 solvency of the Employment Security Fund.

9  
10 **PART V.       AUTHORITY OF THE REVISOR**

11           **SECTION 5.1.** Deletion of references. – The Revisor of Statutes may delete any  
12 reference in the General Statutes to the Employment Security Commission, or any derivative  
13 thereof, and substitute references to the Division of Employment Security (DES) of the  
14 Department of Commerce created by this act wherever conforming changes are necessary. The  
15 Revisor of Statutes may delete any reference in the General Statutes to the Chairman of the  
16 Employment Security Commission, or any derivative thereof, and substitute references to the  
17 Secretary of Commerce, as appropriate.

18  
19 **PART VI.       EFFECTIVE DATE**

20           **SECTION 6.1.** Except as otherwise provided, this act becomes effective November  
21 1, 2011.