

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 1069*
PROPOSED COMMITTEE SUBSTITUTE H1069-PCS40225-TMx-56

Short Title: Unemployment Insurance Law Changes.

(Public)

Sponsors:

Referred to:

May 15, 2014

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE UNEMPLOYMENT INSURANCE LAWS, AS
3 RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
4 UNEMPLOYMENT INSURANCE.

5 Whereas, the confidentiality of unemployment insurance information is governed by
6 federal regulations at 20 C.F.R. Part 603; and

7 Whereas, the United States Department of Labor has notified the State that certain
8 practices of the Department of Commerce, Division of Employment Security, are not in
9 compliance with federal confidentiality requirements; and

10 Whereas, this lack of compliance could jeopardize the State's Title III grant funding
11 and affect the federal Unemployment Tax Act tax rate of the State's employers; and

12 Whereas, the United States Department of Labor recommends that the General
13 Assembly adopt legislation to ensure the State's compliance with federal law and regulations;

14 Now, therefore,

15 The General Assembly of North Carolina enacts:

16
17 **PART I: CONFIDENTIALITY OF UI INFORMATION**

18 **SECTION 1.1.(a)** G.S. 96-4(x) reads as rewritten:

19 "(x) Confidentiality of Records, Reports, and Information Obtained from Claimants,
20 Employers, and Units of Government. – ~~Disclosure~~ For purposes of this Chapter, the term
21 "confidential information" means any unemployment compensation information in the records
22 of the Division of Employment Security that pertains to the administration of the Employment
23 Security Law that is required to be kept confidential under 20 C.F.R. Part 603, including claim
24 information and any information that reveals the name or any identifying particular about any
25 individual or any past or present employer or employing unit, or that could foreseeably be
26 combined with other publicly available information to reveal any such particulars.

27 Confidential information is exempt from the public records disclosure requirements of
28 Chapter 132 of the General Statutes. Confidential information may be disclosed only as
29 permitted in this subsection. Any disclosure and redisclosure of confidential information shall
30 must be consistent with 20 C.F.R. Part 603 and any written guidance promulgated and issued
31 by the U.S. Department of Labor consistent with this regulation and any successor regulation.
32 To the extent a disclosure or redisclosure of confidential information is permitted or required
33 by this federal regulation, the Department's authority to disclose or redisclosure the information
34 includes the following:

35 (1) Confidentiality of Information Contained in Records and Reports. – (i)
36 Except as hereinafter otherwise provided, it shall be unlawful for any person



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1 to obtain, disclose, or use, or to authorize or permit the use of any
2 information which is obtained from an employer, individual, or unit of
3 government pursuant to the administration of this Chapter or G.S. 108A-29.
4 (ii) Any claimant or employer or their legal representatives shall be supplied
5 with information from the records of the Division to the extent necessary for
6 the proper presentation of claims or defenses in any proceeding under this
7 Chapter. Notwithstanding any other provision of law, any claimant may be
8 supplied, subject to restrictions as the Division may by regulation prescribe,
9 with any information contained in his payment record or on his most recent
10 monetary determination, and any individual, as well as any interested
11 employer, may be supplied with information as to the individual's potential
12 benefit rights from claim records. (iii) Subject to restrictions as the Secretary
13 may by regulation provide, information from the records of the Division may
14 be made available to any agency or public official for any purpose for which
15 disclosure is required by statute or regulation. (iv) The Division may, in its
16 sole discretion, permit the use of information in its possession by public
17 officials in the performance of their public duties. (v) The Division shall
18 release the payment and the amount of unemployment compensation
19 benefits upon receipt of a subpoena in a proceeding involving child support.
20 (vi) The Division shall furnish to the State Controller any information the
21 State Controller needs to prepare and publish a comprehensive annual
22 financial report of the State or to track debtors of the State. (vii) The
23 Secretary may disclose or authorize redisclosure of any confidential
24 information to an individual, agency, or entity, public or private, consistent
25 with the requirements enumerated in 20 C.F.R. Part 603 or any successor
26 regulation and any written guidance promulgated and issued by the U.S.
27 Department of Labor consistent with 20 C.F.R. Part 603. (viii) The Division
28 may disclose final decisions and the records of the hearings that led to those
29 decisions only after the expiration of the appeal rights as provided under
30 G.S. 96-15.

31"

32 **SECTION 1.1.(b)** G.S. 132-1.1 is amended by adding a new subsection to read:

33 "(h) Employment Security Information. – Confidential information obtained, compiled,
34 or maintained by the Division of Employment Security may not be disclosed except as
35 provided in G.S. 96-4. As used in this subsection, the term "confidential information" has the
36 same meaning as in G.S. 96-4(x)."

37 **SECTION 1.1.(c)** The Department of Commerce, Division of Employment
38 Security, shall immediately take any action necessary to implement this Part. On or before
39 September 1, 2014, the Division of Employment Security shall report to the Joint Legislative
40 Oversight Committee on Unemployment Insurance on the status of the implementation of this
41 Part."
42

43 **PART II: AUTHORIZING DMV TO DISCLOSE SOCIAL SECURITY NUMBERS;**
44 **REQUIRING UI CLAIMANTS TO CONTACT FIVE POTENTIAL EMPLOYERS PER**
45 **WEEK; AND ELIMINATING THE PROCEDURE TO REQUEST**
46 **RECONSIDERATION OF DECISIONS.**

47 **SECTION 2.1.** G.S. 20-7(b2) reads as rewritten:

48 "(b2) Disclosure of Social Security Number. – The social security number of an applicant
49 is not a public record. The Division may not disclose an applicant's social security number
50 except as allowed under federal law. A violation of the disclosure restrictions is punishable as
51 provided in 42 U.S.C. § 408, and amendments to that law.

1 In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division
2 may disclose a social security number obtained under subsection (b1) of this section only as
3 follows:

- 4 (1) For the purpose of administering the drivers license laws.
- 5 (2) To the Department of Health and Human Services, Child Support
6 Enforcement Program for the purpose of establishing paternity or child
7 support or enforcing a child support order.
- 8 (3) To the Department of Revenue for the purpose of verifying taxpayer
9 identity.
- 10 (4) To the Office of Indigent Defense Services of the Judicial Department for
11 the purpose of verifying the identity of a represented client and enforcing a
12 court order to pay for the legal services rendered.
- 13 (5) To each county jury commission for the purpose of verifying the identity of
14 deceased persons whose names should be removed from jury lists.
- 15 (6) To the Office of the State Controller for the purposes of G.S. 143B-426.38A.
- 16 (7) To the Department of Commerce, Division of Employment Security, for the
17 purpose of verifying employer and claimant identity."

18 **SECTION 2.2.(a)** G.S. 96-9.2(c) reads as rewritten:

19 "(c) Contribution Rate for Experience-Rated Employer. – The contribution rate for an
20 experience-rated employer who does not qualify as a beginning employer under subsection (b)
21 of this section is determined in accordance with the table set out below and then rounded to the
22 nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution
23 rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum
24 contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are
25 the total wages reported by all insured employers for the 12-month period ending on ~~July 31~~
26 June 30 preceding the computation date. An employer's experience rating is computed as a
27 reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is
28 the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a
29 lower contribution rate, and a negative ERRP produces a higher contribution rate.
30"

31 **SECTION 2.2.(b)** This section is effective when it becomes law and applies to
32 contributions payable for calendar quarters beginning on or after January 1, 2014.

33 **SECTION 2.3.(a)** G.S. 96-14.9(e) reads as rewritten:

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

- 36 (1) The individual is registered for employment services, as required by the
37 Division.
- 38 (2) The individual has engaged in an active search for employment that is
39 appropriate in light of the employment available in the labor market and the
40 individual's skills and capabilities.
- 41 (3) The individual has ~~sought work on at least two different days during the~~
42 ~~week and made at least two five~~ job contacts with potential
43 ~~employers.~~ employers during the week.
- 44 (4) The individual has maintained a record of the individual's work search
45 efforts. The record must include the potential employers contacted, the
46 method of contact, and the date contacted. The individual must provide the
47 record to the Division upon request."

48 **SECTION 2.3.(b)** This section becomes effective July 1, 2014, and applies to
49 claims for benefits filed on or after that date.

50 **SECTION 2.4.(a)** G.S. 96-15(h) reads as rewritten:

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

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

31 **SECTION 2.4.(b)** This section becomes effective July 1, 2014, and applies to
32 decisions made on or after that date.

33 **SECTION 2.5.(a)** G.S. 96-3 reads as rewritten:

34 "**§ 96-3. Division of Employment Security.**

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

41 **SECTION 2.5.(b)** G.S. 96-4(j) reads as rewritten:

42 "(j) Hearings. – The Assistant Secretary shall appoint hearing officers or appeals
43 referees to hear contested matters arising from the ~~Employment Security Section and the~~
44 ~~Employment Insurance Section. Division of Employment Security. Appeals from the decisions~~
45 ~~of the hearing officers or appeals referees shall be heard by the Board of Review."~~

46 **SECTION 2.5.(c)** G.S. 96-9.15(f) reads as rewritten:

47 "(f) Domestic Employer Exception. – The Division may authorize an employer of
48 domestic service employees to file an annual report and to file that report by telephone. An
49 annual report allowed under this subsection is due on or before the last day of the month
50 following the close of the calendar year in which the wages are paid. A domestic service
51 employer that files a report by telephone must contact either the tax auditor assigned to the

1 employer's account or the ~~Employment Insurance Section~~ Division of Employment Security in
2 Raleigh and report the required information to that auditor or to that section by the date the
3 report is due."
4

5 **PART III: GARNISHMENT AND ATTACHMENT FOR THE COLLECTION OF**
6 **UNPAID UI TAXES**

7 **SECTION 3.1.(a)** G.S. 1-359 reads as rewritten:

8 "**§ 1-359. Debtors of judgment debtor may satisfy execution.**

9 (a) After the issuing of an execution against property, all persons indebted to the
10 judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff
11 the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the
12 sheriff's receipt is a sufficient discharge for the amount paid.

13 (b) When the Division of Employment Security of the Department of Commerce
14 (Division) prevails in a civil action against an employer to collect unpaid employment taxes
15 under G.S. 96-10(b), the Division may attach or garnish the employer's credit card receipts in
16 payment of the unpaid taxes in the manner provided by subsection (a) of this section. Direct
17 receipt by the Division is a sufficient discharge for the amount paid by a credit card company
18 or clearinghouse."

19 **SECTION 3.1.(b)** G.S. 96-10(b)(1) reads as rewritten:

20 "(b) Collection. –

21 (1) If, after due notice, any employer defaults in any payment of contributions or
22 interest thereon, the amount due shall be collected by civil action in the
23 name of the Division, and the employer adjudged in default shall pay the
24 costs of such action. Civil actions brought under this section to collect
25 contributions or interest thereon from an employer shall be heard by the
26 court at the earliest possible date, and shall be entitled to preference upon the
27 calendar of the court over all other civil actions, except petitions for judicial
28 review under this Chapter and cases arising under the Workers'
29 Compensation Law of this State; or, if any contribution imposed by this
30 Chapter, or any portion thereof, and/or penalties duly provided for the
31 nonpayment thereof shall not be paid within 30 days after the same become
32 due and payable, and after due notice and reasonable opportunity for
33 hearing, the Division, under the hand of the Assistant Secretary, may certify
34 the same to the clerk of the superior court of the county in which the
35 delinquent resides or has property, and additional copies of said certificate
36 for each county in which the Division has reason to believe the delinquent
37 has property located. If the amount of a delinquency is less than fifty dollars
38 (\$50.00), the Division may not certify the amount to the clerk of court until a
39 field tax auditor or another representative of the Division personally
40 contacts, or unsuccessfully attempts to personally contact, the delinquent and
41 collect the amount due. A certificate or a copy of a certificate forwarded to
42 the clerk of the superior court shall immediately be docketed and indexed on
43 the cross index of judgments, and from the date of such docketing shall
44 constitute a preferred lien upon any property which said delinquent may own
45 in said county, with the same force and effect as a judgment rendered by the
46 superior court. The Division shall forward a copy of said certificate to the
47 sheriff or sheriffs of such county or counties, or to a duly authorized agent of
48 the Division, and when so forwarded and in the hands of such sheriff or
49 agent of the Division, shall have all the force and effect of an execution
50 issued to such sheriff or agent of the Division by the clerk of the superior
51 court upon a judgment of the superior court duly docketed in said county.

1 Provided, however, the Division may in its discretion withhold the issuance
2 of said certificate or execution to the sheriff or agent of the Division for a
3 period not exceeding 180 days from the date upon which the original
4 certificate is certified to the clerk of superior court. The Division is further
5 authorized and empowered to issue alias copies of said certificate or
6 execution to the sheriff or sheriffs of such county or counties, or to a duly
7 authorized agent of the Division in all cases in which the sheriff or duly
8 authorized agent has returned an execution or certificate unsatisfied; when so
9 issued and in the hands of the sheriff or duly authorized agent of the
10 Division, such alias shall have all the force and effect of an alias execution
11 issued to such sheriff or duly authorized agent of the Division by the clerk of
12 the superior court upon a judgment of the superior court duly docketed in
13 said county. Provided, however, that notwithstanding any provision of this
14 subsection, upon filing one written notice with the Division, the sheriff of
15 any county shall have the sole and exclusive right to serve all executions and
16 make all collections mentioned in this subsection and in such case no agent
17 of the Division shall have the authority to serve any executions or make any
18 collections therein in such county. A return of such execution, or alias
19 execution, shall be made to the Division, together with all moneys collected
20 thereunder, and when such order, execution, or alias is referred to the agent
21 of the Division for service the said agent of the Division shall be vested with
22 all the powers of the sheriff to the extent of serving such order, execution or
23 alias and levying or collecting thereunder. The agent of the Division to
24 whom such order or execution is referred shall give a bond not to exceed
25 three thousand dollars (\$3,000) approved by the Division for the faithful
26 performance of such duties. The liability of said agent shall be in the same
27 manner and to the same extent as is now imposed on sheriffs in the service
28 of executions. If any sheriff of this State or any agent of the Division who is
29 charged with the duty of serving executions shall willfully fail, refuse, or
30 neglect to execute any order directed to him by the said Division and within
31 the time provided by law, the official bond of such sheriff or of such agent of
32 the Division shall be liable for the contributions, penalty, interest, and costs
33 due by the employer. Any judgment that is executable and allowed under
34 this section shall be subject to attachment and garnishment under
35 G.S. 1-359(b) in payment of unpaid taxes that are due from the employer
36 and collectable under this Article."
37

38 **PART IV: SET THE DURATION OF UNEMPLOYMENT BENEFITS BASED ONLY**
39 **ON UNEMPLOYMENT RATES**

40 **SECTION 4.1.(a)** G.S. 96-14.4 is repealed.

41 **SECTION 4.1.(b)** G.S. 96-14.3 reads as rewritten:

42 "**§ 96-14.3. ~~Minimum and maximum duration~~ Duration of benefits.**

43 (a) Duration. – The ~~minimum and maximum~~ number of weeks an individual is allowed
44 to receive unemployment benefits depends on the seasonal adjusted statewide unemployment
45 rate that applies to the six-month base period in which the claim is filed. One six-month base
46 period begins on January 1 and one six-month base period begins on July 1. For the base period
47 that begins January 1, the average of the seasonal adjusted unemployment rates for the State for
48 the preceding months of July, August, and September applies. For the base period that begins
49 July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding
50 months of January, February, and March applies. The Division must use the most recent
51 seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of

1 Labor Statistics, and not the rate as revised in the annual benchmark. ~~The number of weeks~~
 2 ~~allowed for an individual is determined in accordance with G.S. 96-14.4.~~

3 Seasonal Adjusted	4 Minimum Number	5 Maximum Number
6 Unemployment Rate	7 of Weeks	8 of Weeks
9 Less than or equal to 5.5%	10 5	11 12
12 Greater than 5.5% up to 6%	13 6	14 13
15 Greater than 6% up to 6.5%	16 7	17 14
18 Greater than 6.5% up to 7%	19 8	20 15
21 Greater than 7% up to 7.5%	22 9	23 16
24 Greater than 7.5% up to 8%	25 10	26 17
27 Greater than 8% up to 8.5%	28 11	29 18
30 Greater than 8.5% up to 9%	31 12	32 19
33 Greater than 9%	34 13	35 20

36 (b) Total Benefits. – The total benefits paid to an individual equals the individual's
 37 weekly benefit amount allowed under G.S. 96-14.2 multiplied by the number of weeks allowed
 38 under subsection (a) of this section."

39 **SECTION 4.1.(c)** G.S. 96-14.12(b) reads as rewritten:

40 "(b) Duration of Benefits. – This subsection applies to an individual and the spouse of an
 41 individual who is unemployed based on services performed for a corporation in which the
 42 individual held five percent (5%) or more of the outstanding shares of the voting stock of the
 43 corporation. The maximum number of weeks an individual or an individual's spouse may
 44 receive benefits is ~~limited to the lesser of six weeks or the applicable weeks determined under~~
 45 ~~G.S. 96-14.4 weeks."~~

46 **SECTION 4.1.(d)** G.S. 96-16(f) reads as rewritten:

- 47 (f) (1) A seasonal worker shall be eligible to receive benefits based on seasonal
 48 wages only for a week of unemployment which occurs, or the greater part of
 49 which occurs within the active period or periods of the seasonal pursuit or
 50 pursuits in which he earned base period wages.
- 51 (2) A seasonal worker shall be eligible to receive benefits based on nonseasonal
 wages for any week of unemployment which occurs during any active period
 or periods of the seasonal pursuit in which he has earned base period wages
 provided he has exhausted benefits based on seasonal wages. Such worker
 shall also be eligible to receive benefits based on nonseasonal wages for any
 week of unemployment which occurs during the inactive period or periods
 of the seasonal pursuit in which he earned base period wages irrespective as
 to whether he has exhausted benefits based on seasonal wages.
- (3) The maximum amount of benefits which a seasonal worker shall be eligible
 to receive based on seasonal wages shall be an amount, adjusted to the
 nearest multiple of one dollar (\$1.00), determined by multiplying the
 maximum benefits payable in his benefit year, as provided in ~~G.S. 96-14.4,~~
G.S. 96-14.3, by the percentage obtained by dividing the seasonal wages in
 his base period by all of his base period wages.
- (4) The maximum amount of benefits which a seasonal worker shall be eligible
 to receive based on nonseasonal wages shall be an amount, adjusted to the
 nearest multiple of one dollar (\$1.00), determined by multiplying the
 maximum benefits payable in his benefit year, as provided in ~~G.S. 96-14.4,~~
G.S. 96-14.3, by the percentage obtained by dividing the nonseasonal wages
 in his base period by all of his base period wages.
- (5) In no case shall a seasonal worker be eligible to receive a total amount of
 benefits in a benefit year in excess of the maximum benefits payable for
 such benefit year, as provided in ~~G.S. 96-14.4.~~G.S. 96-14.3."

1 **SECTION 4.1.(e)** This section becomes effective July 1, 2014. Changes made by
2 this section to unemployment benefits apply to claims for benefits filed on or after July 1, 2014.
3

4 **PART V: REQUIRE PHOTO IDENTIFICATION TO RECEIVE UI BENEFITS**

5 **SECTION 5.1.** G.S. 96-14.9 reads as rewritten:

6 "**§ 96-14.9. Weekly certification.**

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

- 12 (1) File a claim for benefits.
13 (2) Report ~~at an employment office~~ as requested by the ~~Division~~ Division and
14 present valid photo identification meeting the requirements of subsection (k)
15 of this section.
16 (3) Meet the work search requirements of subsection (b) of this section.

17 ...

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

- 20 (1) A drivers license, learner's permit, provisional license, or nonoperators
21 identification card issued by North Carolina, another state, the District of
22 Columbia, United States territory, or United States commonwealth.
23 (2) A United States passport.
24 (3) A United States military identification card.
25 (4) A Veterans Identification Card issued by the United States Department of
26 Veterans Affairs.
27 (5) A tribal enrollment card issued by a federally recognized tribe.
28 (6) Any other document issued by the United States or any state that the
29 Division determines adequately identifies the individual."

30
31 **PART VI: EFFECTIVE DATE**

32 **SECTION 6.1.** Except as otherwise provided, this act is effective when it becomes
33 law.