

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

S

D

SENATE BILL 15\*  
PROPOSED COMMITTEE SUBSTITUTE S15-PCS45025-RBx-1

Short Title: Unemployment Insurance Law Changes.

(Public)

Sponsors:

Referred to:

February 4, 2015

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

5 The General Assembly of North Carolina enacts:

6  
7 **PART I. ENHANCE UI PROGRAM INTEGRITY/REPORTING**

8 **SECTION 1.** Chapter 96 of the General Statutes is amended by adding a new  
9 Article to read:

10 "Article 5.

11 "Miscellaneous Provisions.

12 "**§ 96-36. Unemployment insurance program integrity; reporting.**

13 (a) Findings and Purpose. – The General Assembly finds that program integrity  
14 measures have been implemented by the Division to maximize the efficiency and effectiveness  
15 of the State's unemployment insurance program. The purpose of this section is to assure that  
16 these efforts shall include the rigorous and consistent use of business intelligence and data  
17 analytics for enhanced unemployment insurance program integrity.

18 (b) Required Activities. – To achieve the program integrity enhancements required by  
19 this section, at a minimum, the Division shall do all of the following:

20 (1) Prioritize Division program integrity efforts that maximize utilization of and  
21 information sharing with or between these projects and initiatives in order to  
22 prevent, detect, and reduce unemployment insurance fraud, improper  
23 payments, overpayments, and other programmatic irregularities:

24 a. Government Data Analytics Center (GDAC);

25 b. Southeast Consortium Unemployment Insurance Benefits Initiative  
26 (SCUBI); and

27 c. Any other program integrity capabilities identified by the Division.

28 (2) Coordinate efforts with the Office of Information Technology Services to  
29 ensure that the Division identifies and integrates into its operations and  
30 procedures the most effective and accurate processes and scalable tools  
31 available to prevent payment of fraudulent, suspicious, or irregular claims.

32 (3) Coordinate efforts with the Department of Revenue to enhance alerts  
33 indicating circumvention of the payment of unemployment insurance taxes.

34 (4) Coordinate efforts with the Department of Health and Human Services to  
35 facilitate claims cross-matching and other appropriate steps to enhance  
36 program integrity.



\* S 1 5 - P C S 4 5 0 2 5 - R B X - 1 \*

1           (5) Coordinate efforts with the Office of State Controller to facilitate  
2           cross-matching and other appropriate steps using BEACON (Building  
3           Enterprise Access for North Carolina's Core Operation Needs).

4           (c) Quarterly Reporting. – Beginning April 1, 2015, and then quarterly thereafter, the  
5           Division shall make detailed written progress reports on its efforts to carry out all of the  
6           directives in this section to the Chairs of the Joint Legislative Oversight Committee on  
7           Unemployment Insurance, the Chairs of the Joint Legislative Oversight Committee on  
8           Information Technology, the Chairs of the House Appropriations Subcommittee on Natural and  
9           Economic Resources, the Chairs of the Senate Appropriations Committee on Natural and  
10           Economic Resources, and the Fiscal Research Division. At a minimum, the quarterly report  
11           shall include all of the following:

12           (1) Metrics regarding unemployment benefits overpayments, improper  
13           payments, and fraudulent payments, in terms of both percentage and dollar  
14           amount.

15           (2) Information on fraud perpetrator metrics, in terms of percent and value, by  
16           type (whether by employer or claimant), and activity subcategory, such as  
17           employee misclassification, unemployment insurance tax rate manipulation  
18           (SUTA dumping), fictitious employers, fictitious claimants, deceased  
19           claimants, incarcerated claimants, work and earn, and similar activities.

20           (3) Quantified investigation activity, including the following:

21           a. Type and subcategory of investigations.

22           b. Number of alerts received and from which system (whether GDAC  
23           or others).

24           c. Number of alerts investigated, including from which system the alert  
25           was generated.

26           d. Associated value of both the amount of benefits paid and the amount  
27           that was prevented from being paid.

28           e. Number of false positives.

29           f. Number of dispositions entered, including into which system.

30           (d) Annual Reporting. – Beginning January 1, 2016, the Division shall make an annual  
31           report to the General Assembly on its efforts to carry out all of the directives in this section. At  
32           a minimum, each annual report shall include all of the following information:

33           (1) The methodology used by the Division to determine analytic priorities for  
34           unemployment insurance program integrity investigation.

35           (2) A report on the State's Benefit Accuracy Measurement (BAM) as required  
36           by the U.S. Department of Labor, including how North Carolina's BAM has  
37           changed over time and how its current rate compares to other states. The  
38           report shall also include an update on BAM methodology and information  
39           regarding how it might be modified.

40           (3) An explanation of the Division's unemployment insurance program integrity  
41           activities in coordination with the Office of Information Technology  
42           Services, the Department of Health and Human Services, the Department of  
43           Revenue, and the Office of State Controller as required by subsection (b) of  
44           this section.

45           (4) Division workflows, both intra-agency and interagency, to address process  
46           problems and program integrity issues, including identification of tools,  
47           resources, and plans for continued improvement of unemployment insurance  
48           program integrity efforts.

49           (5) An analysis of the information required by subsection (c) of this section,  
50           along with an explanation of how that information will be used to augment  
51           the State's business intelligence and data analytics capabilities to prevent,

1 detect, and reduce unemployment insurance fraud, improper payments,  
2 overpayments, and other programmatic irregularities."  
3

## 4 **PART II. UNEMPLOYMENT INSURANCE LAW CHANGES**

5 **SECTION 2.1.** G.S. 20-7(b2) is amended by adding a new subdivision to read:

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

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

13 ...  
14 (7) To the Department of Commerce, Division of Employment Security, for the  
15 purpose of verifying employer and claimant identity."

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

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

28 ...."

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

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

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

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

46 **SECTION 2.3.(b)** This section becomes effective July 1, 2015, and applies to  
47 claims for benefits filed on or after that date.

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

49 "(h) Judicial Review. – ~~Any A~~ decision of the Division, ~~in the absence of judicial review~~  
50 ~~as herein provided, or in the absence of an interested party filing a request for reconsideration,~~  
51 ~~shall become~~ Board of Review becomes final 30 days after the date of notification or mailing

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

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

28 **SECTION 2.4.(b)** This section becomes effective July 1, 2015, and applies to  
29 decisions made on or after that date.

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

31 "**§ 96-3. Division of Employment Security.**

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

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

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

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

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

1           **SECTION 2.6.(a)** G.S. 1-359 reads as rewritten:

2   "**§ 1-359. Debtors of judgment debtor may satisfy execution.**

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

7       **(b)** When the Division of Employment Security of the Department of Commerce  
8 (Division) prevails in a civil action against an employer to collect unpaid employment taxes  
9 under G.S. 96-10(b), the Division may attach or garnish the employer's credit card receipts or  
10 other third-party payments in payment of the unpaid taxes in the manner provided by  
11 subsection (a) of this section. Direct receipt by the Division is a sufficient discharge for the  
12 amount paid by a credit card company, clearinghouse, or third-party payment processor."

13           **SECTION 2.6.(b)** G.S. 96-10(b)(1) reads as rewritten:

14       **"(b)** Collection. –

15       **(1)** If, after due notice, any employer defaults in any payment of contributions or  
16 interest thereon, the amount due shall be collected by civil action in the  
17 name of the Division, and the employer adjudged in default shall pay the  
18 costs of such action. Civil actions brought under this section to collect  
19 contributions or interest thereon from an employer shall be heard by the  
20 court at the earliest possible date, and shall be entitled to preference upon the  
21 calendar of the court over all other civil actions, except petitions for judicial  
22 review under this Chapter and cases arising under the Workers'  
23 Compensation Law of this State; or, if any contribution imposed by this  
24 Chapter, or any portion thereof, and/or penalties duly provided for the  
25 nonpayment thereof shall not be paid within 30 days after the same become  
26 due and payable, and after due notice and reasonable opportunity for  
27 hearing, the Division, under the hand of the Assistant Secretary, may certify  
28 the same to the clerk of the superior court of the county in which the  
29 delinquent resides or has property, and additional copies of said certificate  
30 for each county in which the Division has reason to believe the delinquent  
31 has property located. If the amount of a delinquency is less than fifty dollars  
32 (\$50.00), the Division may not certify the amount to the clerk of court until a  
33 field tax auditor or another representative of the Division personally  
34 contacts, or unsuccessfully attempts to personally contact, the delinquent and  
35 collect the amount due. A certificate or a copy of a certificate forwarded to  
36 the clerk of the superior court shall immediately be docketed and indexed on  
37 the cross index of judgments, and from the date of such docketing shall  
38 constitute a preferred lien upon any property which said delinquent may own  
39 in said county, with the same force and effect as a judgment rendered by the  
40 superior court. The Division shall forward a copy of said certificate to the  
41 sheriff or sheriffs of such county or counties, or to a duly authorized agent of  
42 the Division, and when so forwarded and in the hands of such sheriff or  
43 agent of the Division, shall have all the force and effect of an execution  
44 issued to such sheriff or agent of the Division by the clerk of the superior  
45 court upon a judgment of the superior court duly docketed in said county.  
46 Provided, however, the Division may in its discretion withhold the issuance  
47 of said certificate or execution to the sheriff or agent of the Division for a  
48 period not exceeding 180 days from the date upon which the original  
49 certificate is certified to the clerk of superior court. The Division is further  
50 authorized and empowered to issue alias copies of said certificate or  
51 execution to the sheriff or sheriffs of such county or counties, or to a duly

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

31 **SECTION 2.7.** G.S. 96-14.9 reads as rewritten:

32 **"§ 96-14.9. Weekly certification.**

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

- 38 (1) File a claim for benefits.  
 39 (2) Report ~~at an employment office~~ as requested by the ~~Division~~ Division and  
 40 present valid photo identification meeting the requirements of subsection (k)  
 41 of this section.  
 42 (3) Meet the work search requirements of subsection (b) of this section.

43 ...

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

- 46 (1) A drivers license, learner's permit, provisional license, or nonoperator's  
 47 identification card issued by North Carolina, another state, the District of  
 48 Columbia, United States territory, or United States commonwealth.  
 49 (2) A United States passport.  
 50 (3) A United States military identification card.

- (4) A Veterans Identification Card issued by the United States Department of Veterans Affairs.
- (5) A tribal enrollment card issued by a federally recognized tribe.
- (6) Any other document that the Division determines adequately identifies the individual and that is issued by the United States, any state, the District of Columbia, United States territory, or United States commonwealth."

**SECTION 2.8.** Section 1.10(c) of S.L. 2011-401 reads as rewritten:

"**SECTION 1.10.(c)** The Department of Commerce, Division of Employment Security, shall adopt ~~all existing~~ rules and regulations in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted and filed with the Rules Review Commission by December 31, 2012, May 20, 2015, shall expire."

**SECTION 2.9.(a)** G.S. 96-14.4 is repealed.

**SECTION 2.9.(b)** G.S. 96-14.3 reads as rewritten:

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

(a) Duration. – ~~The minimum and maximum~~ number of weeks an individual is allowed to receive unemployment benefits depends on the seasonal adjusted statewide unemployment rate that applies to the six-month base period in which the claim is filed. One six-month base period begins on January 1 and one six-month base period begins on July 1. For the base period that begins January 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of July, August, and September applies. For the base period that begins July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of January, February, and March applies. The Division must use the most recent seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and not the rate as revised in the annual benchmark. ~~The number of weeks allowed for an individual is determined in accordance with G.S. 96-14.4.~~

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

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

**SECTION 2.9.(c)** G.S. 96-14.12(b) reads as rewritten:

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

**SECTION 2.9.(d)** G.S. 96-16(f) reads as rewritten:

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

- 1 (2) A seasonal worker shall be eligible to receive benefits based on nonseasonal  
2 wages for any week of unemployment which occurs during any active period  
3 or periods of the seasonal pursuit in which he has earned base period wages  
4 provided he has exhausted benefits based on seasonal wages. Such worker  
5 shall also be eligible to receive benefits based on nonseasonal wages for any  
6 week of unemployment which occurs during the inactive period or periods  
7 of the seasonal pursuit in which he earned base period wages irrespective as  
8 to whether he has exhausted benefits based on seasonal wages.
- 9 (3) The maximum amount of benefits which a seasonal worker shall be eligible  
10 to receive based on seasonal wages shall be an amount, adjusted to the  
11 nearest multiple of one dollar (\$1.00), determined by multiplying the  
12 maximum benefits payable in his benefit year, as provided in ~~G.S. 96-14.4,~~  
13 G.S. 96-14.3, by the percentage obtained by dividing the seasonal wages in  
14 his base period by all of his base period wages.
- 15 (4) The maximum amount of benefits which a seasonal worker shall be eligible  
16 to receive based on nonseasonal wages shall be an amount, adjusted to the  
17 nearest multiple of one dollar (\$1.00), determined by multiplying the  
18 maximum benefits payable in his benefit year, as provided in ~~G.S. 96-14.4,~~  
19 G.S. 96-14.3, by the percentage obtained by dividing the nonseasonal wages  
20 in his base period by all of his base period wages.
- 21 (5) In no case shall a seasonal worker be eligible to receive a total amount of  
22 benefits in a benefit year in excess of the maximum benefits payable for  
23 such benefit year, as provided in ~~G.S. 96-14.4~~ G.S. 96-14.3."

24 **SECTION 2.9.(e)** This section becomes effective July 1, 2015. Changes made by  
25 this section to unemployment benefits apply to claims for benefits filed on or after July 1, 2015.  
26

### 27 **PART III. DIVISION OF EMPLOYMENT SECURITY BOARD OF REVIEW**

28 **SECTION 3.1.(a)** The following decisions in an appeal by a party to a decision of  
29 an appeals referee or hearing officer under Chapter 96 of the General Statutes are hereby  
30 validated and given the same legal effect as if those decisions had been issued by the Board of  
31 Review (BOR):

- 32 (1) Decisions issued by the Assistant Secretary of Commerce for the Division of  
33 Employment Security or by the Secretary of Commerce's designee.
- 34 (2) Decisions issued by the three individuals appointed by the Governor in  
35 December 2013 to serve as members of the BOR.

36 **SECTION 3.1.(b)** This section is effective when it becomes law and applies to  
37 decisions rendered on or after November 1, 2011.

38 **SECTION 3.2.(a)** G.S. 96-4(b) and Section 21 of S.L. 2013-224 are repealed.

39 **SECTION 3.2.(b)** Article 2D of Chapter 96 of the General Statutes is amended by  
40 adding a new section to read:

#### 41 **"§ 96-15.3. Board of Review.**

42 (a) Purpose. – The Board of Review (BOR) is created to determine appeals policies and  
43 procedures and to hear appeals arising from the decisions and determinations of the Division.  
44 The Department of Commerce must assign staff to the BOR. The BOR and its staff must  
45 perform their job responsibilities independent of the Governor, the General Assembly, the  
46 Department, and the Division and in accordance with any written guidance promulgated and  
47 issued by the U.S. Department of Labor.

48 (b) Members. – The BOR consists of three members appointed by the Governor and  
49 subject to confirmation by the General Assembly as provided in subsection (c) of this section.  
50 One member must be classified as representative of employees, one member must be classified  
51 as representative of employers, and one member must be classified as representative of the



1 general public. The member appointed to represent the general public will serve as chair of the  
2 BOR and must be a licensed attorney in this State.

3 Members of the BOR serve staggered four-year terms. A term begins on July 1 of the year  
4 of appointment and ends on June 30 of the fourth year. No individual may serve more than two  
5 terms on the BOR. In calculating the number of terms served, a partial term that is less than 24  
6 months in length will not be included. The General Assembly must set the annual salaries of  
7 the BOR in the current Operations Appropriations Act.

8 (c) Confirmation. – Appointments of members to serve on the BOR are subject to  
9 confirmation by the General Assembly by joint resolution. The Governor must submit the name  
10 of the individual the Governor wants to appoint to the BOR to the General Assembly for  
11 confirmation on or before May 1 of the year of the expiration of the term. If the General  
12 Assembly does not confirm the appointment by May 30, the office will be considered vacant  
13 and must be filled in accordance with subsection (d) of this section. The Governor may not  
14 resubmit the name of the nominee whom the General Assembly did not confirm for the office.  
15 If the Governor fails to timely submit a nomination, the General Assembly will appoint to fill  
16 the succeeding term as provided in subsection (e) of this section.

17 (d) Vacancies. – For the purpose of this subsection, the General Assembly is not in  
18 session only (i) prior to convening of the regular session, (ii) during any adjournment of the  
19 regular session for more than 10 days, and (iii) after sine die adjournment of the regular  
20 session. A vacancy in an office of the BOR prior to the expiration of the term of office must be  
21 filled in accordance with this subsection:

22 (1) During legislative session. – If a vacancy in an office arises or exists when  
23 the General Assembly is in session, the Governor must submit the name of  
24 the individual to be appointed to fill the vacancy for the remainder of the  
25 unexpired term within 30 days after the vacancy arises to the General  
26 Assembly for confirmation by the General Assembly. If the General  
27 Assembly does not confirm the appointment within 30 days after the General  
28 Assembly receives the nomination, the office will be considered vacant and  
29 must be filled in accordance with this subsection. The Governor may not  
30 resubmit the name of the nominee whom the General Assembly did not  
31 confirm for the vacancy. If the Governor fails to timely submit a nomination,  
32 the General Assembly will appoint to fill the vacancy as provided in  
33 subsection (e) of this section.

34 (2) During legislative interim. – If a vacancy in an office arises or exists when  
35 the General Assembly is not in session, the Governor must appoint an  
36 individual to that office to serve on an interim basis pending confirmation by  
37 the General Assembly. The Governor must submit the name of the  
38 individual to be appointed to fill the vacancy for the remainder of the  
39 unexpired term to the General Assembly for confirmation within 14 days of  
40 the date the General Assembly convenes or reconvenes for the next regular  
41 session. If the Governor fails to timely submit a nomination, the General  
42 Assembly will appoint to fill the vacancy as provided in subsection (e) of  
43 this section.

44 (e) Legislative Appointments. – If the Governor fails to timely submit the name of an  
45 individual to be appointed to the BOR as provided in this section, then the General Assembly  
46 may appoint an individual to fill the vacancy in accordance with G.S. 120-121 and the  
47 provisions of this subsection. If the vacancy occurs in an odd-numbered year, the appointment  
48 is made upon the recommendation of the President Pro Tempore of the Senate. If the vacancy  
49 occurs in an even-numbered year, the appointment is made upon the recommendation of the  
50 Speaker of the House of Representatives."

1           **SECTION 3.3.** To achieve the staggered terms for the members of the Board of  
2 Review (BOR) in accordance with G.S. 96-15.3, as enacted by this act, and notwithstanding the  
3 appointment provisions in G.S. 96-4(b), as repealed by this act, the terms for current BOR  
4 members will expire as follows:

- 5           (1) The term of the member serving on the BOR that represents employers  
6           expires June 30, 2015.
- 7           (2) The term of the member serving on the BOR that represents employees  
8           expires June 30, 2016.
- 9           (3) The term of the member serving on the BOR that represents the general  
10          public expires June 30, 2017.

11           **SECTION 3.4.** By May 1, 2015, the Secretary of Commerce and the Chair of the  
12 Board of Review (BOR) shall jointly make a detailed written report to the Chairs of the Joint  
13 Legislative Oversight Committee on Unemployment Insurance, the Chairs of the Senate  
14 Appropriations Committee on Natural and Economic Resources, the Chairs of the House of  
15 Representatives Appropriations Subcommittee on Natural and Economic Resources, and the  
16 Fiscal Research Division on all of the following:

- 17          (1) Measures taken to ensure the independence of BOR staff regarding higher  
18          level appeals in accordance with State law and federal guidelines.
- 19          (2) The number, types, and classifications of positions (including coverage  
20          under the State Human Resources Act) assigned to BOR staff.
- 21          (3) For each BOR staff member, the percentage of duties that involve work only  
22          for the BOR and the nature of duties performed.
- 23          (4) For each BOR staff member, the percentage of duties that do not involve the  
24          work of the BOR and the nature of duties performed.
- 25          (5) Whether or not adequate staff is assigned to the BOR. If there is not  
26          adequate staffing, determine what additional resources are required to  
27          achieve adequate staffing.

28  
29 **PART IV. EFFECTIVE DATE**

30           **SECTION 4.** Except as otherwise provided, this act is effective when it becomes  
31 law.