

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: UI Fund Solvency & Program Changes.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

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

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 96-5 reads as rewritten:

"§ 96-5. Employment Security Administration Fund.

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

- (1) ~~all moneys~~Moneys appropriated by this State, ~~all moneys~~State.
- (2) ~~Moneys~~ received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for ~~such purpose, the administration of this Chapter.~~
- (3) ~~and shall also include any moneys~~Moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to ~~such agency, any amounts~~agency.
- (4) ~~Moneys~~ received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in ~~such fund, and any fund.~~
- (5) ~~proceeds~~Proceeds realized from the sale or disposition of any ~~such~~ equipment or supplies which may no longer be necessary for the proper



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administration of this ~~Chapter. Provided, any~~ Chapter. interest collected on contributions and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment Security Administration Fund created by subsection (c) of this section. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Employment Security Administration Fund shall be deposited in said fund.

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

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

(b) Replacement of Funds Lost or Improperly Expended. – If any moneys received from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered balances in the Employment Security Administration Fund or any moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this State or its political subdivisions and matched by such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of those found necessary by the Secretary of Labor for the proper administration of this Chapter, it is the policy of this State that such moneys, not available from the Special Employment Security Administration Fund established by subsection (c) of this section, shall by G.S. 96-5.1 must be replaced by moneys appropriated for such purpose from the general funds of this State to the Employment Security Administration Fund for expenditure as provided in subsection (a) subsection (a1) of this section. Upon receipt of notice of such a finding by the Secretary of Labor, the Division shall must promptly pay from the Special Employment Security Administration Fund such sum if available in such fund; if not available, it shall must promptly report the amount required for such replacement to the Governor and the Governor shall, at the earliest opportunity, will submit to the legislature a request for the appropriation of such amount.

~~(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly, shall be paid into this fund. No part of said fund shall be expended or available for expenditure~~

1 in lieu of federal funds made available to the Secretary for the administration of this Chapter.
2 Said fund shall be used by the Division for the payment of costs and charges of administration
3 which are found by the Secretary of Labor not to be proper and valid charges payable out of
4 any funds in the Employment Security Administration Fund received from any source and shall
5 also be used by the Secretary for: (i) extensions, repairs, enlargements and improvements to
6 buildings, and the enhancement of the work environment in buildings used for Division
7 business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious
8 handling of Division business; and (iii) the temporary stabilization of federal funds cash flow.
9 The Division may use funds either from the Special Employment Security Administration Fund
10 created by this subsection or from federal funds, or from a combination of the two, to offset the
11 costs of compliance with Article 7A of Chapter 163 of the General Statutes of North Carolina
12 or compliance with P.L. 103-31. Refunds of interest allowable under G.S. 96-10, subsection (e)
13 shall be made from this special fund: Provided, such interest was deposited in said fund:
14 Provided further, that in those cases where an employer takes credit for a previous overpayment
15 of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that
16 the amount of such credit taken for such overpayment of interest shall be reimbursed to the
17 Unemployment Insurance Fund from the Special Employment Security Administration Fund.
18 The Special Employment Security Administration Fund, except as otherwise provided in this
19 Chapter, shall be subject to the provisions of the State Budget Act (Chapter 143C of the
20 General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be
21 deposited, administered, and disbursed in the same manner and under the same conditions and
22 requirements as is provided by law for other special funds in the State treasury, and shall be
23 maintained in a separate account on the books of the State treasury. The State Treasurer shall
24 be liable on his official bond for the faithful performance of his duties in connection with the
25 Special Employment Security Administration Fund provided for under this Chapter. Such
26 liability on the official bond shall be effective immediately upon the enactment of this
27 provision, and such liability shall exist in addition to any liability upon any separate bond
28 existent on the effective date of this provision, or which may be given in the future. All sums
29 recovered on any surety bond for losses sustained by the Special Employment Security
30 Administration Fund shall be deposited in said fund. The moneys in the Special Employment
31 Security Administration Fund shall be continuously available to the Division for expenditure in
32 accordance with the provisions of this section.

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

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

43 (e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General
44 Assembly of North Carolina to the Department of Commerce, Division of Employment
45 Security out of funds credited to and held in this State's account in the Unemployment Trust
46 Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with
47 section 903 of the Social Security Act, the Division is authorized to utilize such funds for the
48 administration of the Employment Security Law, including personal services, operating and
49 other expenses incurred in the administration of said law, as well as for the purchase or rental,
50 either or both, of offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment,

1 supplies and the construction of buildings or parts of buildings, suitable for use in this State by
2 the Division, and for the payment of expenses incurred for the construction, maintenance,
3 improvements or repair of, or alterations to, such real or personal property. Provided, that any
4 such funds appropriated by the General Assembly shall not exceed the amount in the
5 Unemployment Trust Fund which may be obligated for expenditure for such purposes; and
6 provided that said funds shall not be obligated for expenditure, as herein provided, after the
7 close of the two-year period which begins on the effective date of the appropriation.

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

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

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

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

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

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

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

49 **"§ 96-5.1. Special Employment Security Administration Fund.**

(a) Special Fund. – There is created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. The Fund consists of all interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this Chapter as well as any appropriations of funds by the General Assembly, shall be paid into this fund.

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

(1) The payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source.

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

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

SECTION 1.(c) G.S. 96-6 reads as rewritten:

"§ 96-6. Unemployment Insurance Fund.

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

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

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

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

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

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

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

(7) Reimbursement payments in lieu of contributions.

All moneys in the fund shall be commingled and undivided.

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

(1) A clearing account,

(2) An unemployment trust fund account, and

(3) A benefit account.

(b1) Receipt of Funds. ~~All The Division must immediately forward all moneys payable to the UI Fund fund, upon receipt thereof by the Division, shall be forwarded immediately to the treasurer to the Treasurer who shall immediately deposit them in for deposit into the clearing account. Refunds payable pursuant to G.S. 96-10 G.S. 96-19.30 may be paid from the clearing account upon warrants issued upon the treasurer as provided in G.S. 143B-426.40G under the requisition of the Division. After clearance thereof, all other moneys in the clearing account shall must be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. amended.~~ The benefit account ~~shall consist~~ consists of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the ~~treasurer, State Treasurer,~~ State Treasurer, under the direction of the Secretary, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium ~~shall may~~ may be paid out of the fund. The State Treasurer ~~shall be~~ is liable ~~on his official bond~~ for the faithful performance of his duties in connection with the unemployment insurance fund provided for under this Chapter. ~~Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability~~ Liability on the State Treasurer's official bond shall exist exists in addition to any liability upon any separate ~~bond existent on the effective date of this provision, or which may be given in the future. bond.~~ All sums recovered on any surety bond for losses sustained by the unemployment insurance fund ~~shall must~~ must be deposited ~~in said fund in the UI Fund.~~

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

(d) Management of Funds upon Discontinuance of Unemployment Trust Fund. ~~The provisions of subsections (a), (b), and (c), this section,~~ to the extent that they relate to the

unemployment trust fund, ~~shall be~~ operative only so long as ~~such the~~ unemployment trust fund ~~continues to exist~~, and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited ~~therein in it~~ by this State for benefit purposes, together with this State's proportionate share of the earnings of ~~such the~~ unemployment trust fund, ~~from which no fund~~. No other state is permitted to make ~~withdrawals~~ withdrawals from this State's account. If and when ~~such the~~ unemployment trust fund ceases to exist, or ~~such the~~ separate book account is no longer maintained, all moneys, properties, or securities ~~therein~~ belonging to the Unemployment Insurance Fund of this State ~~shall must~~ be transferred to the treasurer of the Unemployment Insurance Fund, who ~~shall must~~ hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Secretary of the Department of Commerce, in accordance with the provisions of this Chapter: ~~Provided, that such moneys shall be Chapter. The funds may be invested in the following readily marketable classes of securities: Bonds~~ bonds or other interest-bearing obligations of the United States of America or such investments as are now permitted by law for sinking funds of the State of North Carolina; and provided further, that such Carolina. Any investment shall at all times be so made that all the assets of the fund shall always must be readily convertible into cash when needed for the payment of benefits. The treasurer shall may dispose of securities or other properties belonging to the Unemployment Insurance Fund only under the direction of the Secretary of the Department of Commerce.

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

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

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

"§ 96-6.1. Employment Security Reserve Fund.

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

- (1) Principal payment under Title XII of the Social Security Act.
- (2) Interest payments required on advances under Title XII of the Social Security Act.
- (3) Payment of benefits.
- (4) Administrative costs for the collection of the tax.
- (5) Refunds of the tax.

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

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

SECTION 2.(a) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer and

appropriate to the Unemployment Insurance Fund any unencumbered cash balance as of June 30, 2013, of each of the following special funds within the Department and then close each of these special funds:

(1) Worker Training Trust Fund (Special Fund Code 64654-6400).

(2) Training and Employment Account (Special Fund Code 64655-6601).

SECTION 2.(b) Ten million dollars (\$10,000,000) is appropriated from the Special Employment Security Administration Fund to the Unemployment Insurance Fund.

SECTION 2.(c) The Division of Employment Security, Department of Commerce, must consider the following factors when determining the appropriate number and location of employment security offices:

(1) Local population served.

(2) Staff availability.

(3) Proximity of local offices to each other.

(4) Use of automation products to provide services.

(5) Services and procedural efficiencies.

SECTION 2.(d) This section becomes effective July 1, 2013.

SECTION 3.(a) The following statutes are recodified as indicated:

Current Statute	Recodified Statute
G.S. 96-15	G.S. 96-19.70
G.S. 96-15.1	G.S. 96-19.72
G.S. 96-15.2	G.S. 96-19.73
G.S. 96-16	G.S. 96-19.71
G.S. 96-17	G.S. 96-19.74
G.S. 96-18	G.S. 96-19.80
G.S. 96-19	G.S. 96-19.81

SECTION 3.(b) For the 2013 taxable year, tax-paying employers must report and remit contributions and the 20% tax imposed on contributions in the same manner and to the same extent as provided under Article 2 of Chapter 96 of the General Statutes as it existed on January 1, 2013.

SECTION 3. (c) Except as provided in subsections (a) and (b) of this section, the remainder of Article 2 of Chapter 96 is repealed.

SECTION 3.(d) This section becomes effective when it becomes law.

SECTION 4.(a) Chapter 96 of the General Statutes is amended by adding a new article to read:

"Article 2A.

"Unemployment Insurance Division.

"Part 1. Title and Definitions.

"§ 96-19.1.

This Article may be cited as "The Re-Employment Assistance Act of 2013".

"§ 96-19.2. Definitions.

The following definitions apply in this Chapter:

(1) Agricultural labor. – Defined in section 3306 of the Code.

(2) Alternative base period. – The last four completed calendar quarters immediately preceding the first day of an individual's benefit year.

(3) American aircraft. – Defined in section 3306 of the Code.

(4) American employer. – Defined in section 3306 of the Code.

(5) American vessel. – Defined in section 3306 of the Code.

(6) Average weekly insured wage. – The weekly rate obtained by dividing the total wages reported by all insured employers by the monthly average in

- insured employment during the immediately preceding calendar year and further dividing the quotient obtained by 52.
- (7) Base period. – The first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.
- (8) Benefit. – Compensation payable to an individual with respect to the individual's unemployment.
- (9) Benefit year. – The one year period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. If the individual is payroll attached, the benefit year begins on the Sunday preceding the payroll week ending date. If the individual is not payroll attached, the benefit year begins on the Sunday of the calendar week with respect to which the claimant registered for work and filed a valid claim for benefits.
- (10) Calendar quarter. – The period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.
- (11) Claimant. – An individual who makes a claim for unemployment benefits.
- (12) Code. – Defined in G.S. 105-228.90.
- (13) Computation date. – August 1st.
- (14) Contributions. – Payments made by a person to the UI Fund.
- (15) Crew leader. – An individual who meets all of the following conditions:
- a. Furnishes individuals to perform agricultural labor for any other person.
 - b. Pays the individuals for the agricultural labor performed by them.
 - c. Has not entered into a written agreement with such other person under which the individual is designated as an employee of the other person.
- (16) Department. – The North Carolina Department of Commerce.
- (17) Division. – The Department's Division of Employment Security.
- (18) Electronic transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or it is agent to credit or debit an account.
- (19) Employee. – Defined in section 3306 of the Code. The term does not include an independent contractor. The term does include an employee who is on paid vacation or on paid leave of absence due to illness or other reason, irrespective of the failure of the individual to perform services for the employing unit during such period.
- (20) Employer. – Defined in G.S. 96-96.4.
- (21) Employing unit. – A person who has or had in its employ one or more individuals performing services for it within this State. It may also include the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person.
- (22) Employment. – Defined in G.S. 96-19.3.
- (23) Employment security law. – Any law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits.
- (24) Employment service company. – A leasing company or temporary help service which contracts with clients or customers to supply individuals to perform services for the client or customer and which, both under contract and in fact meet all of the following conditions:

- a. Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services.
- b. Determines assignments or reassignments of individuals to its clients, or customers, even if the individuals retain the right to refuse specific assignments.
- c. Sets the rate of pay of the individuals, whether or not through negotiation
- d. Pays the individuals from its account or accounts.
- e. Hires and terminates individuals who perform services for the clients or customers.
- (25) Farm. – Stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, or other similar structure used primarily for the raising of agricultural or horticultural commodities.
- (26) Farm operator. – The person responsible for the management decisions in operating an agricultural operation.
- (27) Federal Unemployment Tax Act. – Chapter 23 of the Code.
- (28) Full-time student. – Defined in section 3306 of the Code.
- (29) Immediate family. – An individual's spouse, child, grandchild, parent, and grandparent, whether the relationship is a biological, step-, half-, or in-law relationship.
- (30) Independent contractor. – An individual who contracts to do work for another person and is not subject to another's control or direction with respect to the manner in which the details of the work are to be performed or what the individual must do as the work progresses.
- (31) Indian tribe. – A tribe to which subsection (d) of section 3309 of the Code applies.
- (32) Institution of higher education. – One or more of the following:
- a. An institution as defined in section 3304 of the Code.
- b. A university, college, or community college in the State.
- (33) Localized in this State. – Service that meets one of the following conditions:
- a. Is performed entirely within the State.
- b. Is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State. For example, the individual's service without the State is temporary or transitory in nature or consists of isolated transactions.
- (34) Nonprofit organization. – A religious, charitable, educational, or other organization that is exempt from federal income tax and described in section 501(c)(3) of the Code.
- (35) Permanent employment. – Employment of more than 30 consecutive calendar days duration, regardless of whether work is performed on all those days.
- (36) Person. – An individual, a firm, a partnership, an association, a corporation, whether foreign or domestic, a limited liability company, or any other organization or group acting as a unit.
- (37) Qualifying wages. – Wages earned with an employer subject to the provisions of this Chapter or some other state employment security law or in federal service as defined in 5 U.S.C. Chapter 85.
- (38) Rail employer. – Defined in section 3322 of the Code.

- (39) Reemployment services. – Job search assistance and job placement services, such as counseling, testing, assessment, and providing occupational and labor market information, job search workshops, job clubs, referrals to employers, and other similar services.
- (40) Secondary school. – Any school that is not an institution of higher education.
- (41) Secretary. – The Secretary of the Department of Commerce or the Assistant Secretary in charge of the Division of Employment Security.
- (42) State. – Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
- (43) UI Fund. – The Unemployment Insurance Fund established by this Chapter, to which all contributions required and from which all benefits provided under this Chapter shall be paid.
- (44) Unemployed. – Defined in G.S. 96-19.6.
- (45) Wages. – Defined in G.S. 96-19.5.
- (46) Week. – A period of seven consecutive calendar days. When a calendar week falls partly within each of two calendar years, the days of that week up to January 1 is one calendar week and the days beginning on or after January 1 is another calendar week.

"§ 96-19.3. Employment.

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

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

- (1) The service is localized in this State.
- (2) The service is not localized in any state but some of the service is performed in this State, and one or more of the following applies:
- a. The base of operations is in this State.
- b. If there is no base of operations, then the place from which such service is directed or controlled is in this State.
- c. The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.
- (3) The service, wherever performed, is within the United States or Canada and both of the following applies:
- a. The service is not covered under the unemployment compensation law of any other state or Canada.
- b. The place from which the service is directed or controlled is in this State.
- (4) The service is performed outside the United States or Canada by a citizen of the United States in the employ of an American employer and at least one of the following applies:
- a. The employer's principal place of business in the United States is located in this State.
- b. The employer has no place of business in the United States but the employer is an individual who is a resident of this State, or a corporation that is organized under the laws of this State, or a partnership or a trust where the number of partners or trustees who

- 1 are residents of this State is greater than the number who are
2 residents of any other state.
- 3 c. The employer has elected coverage in this State, as provided in
4 G.S. 96-19.21.
- 5 d. The employer has not elected coverage in any state and the employee
6 has filed a claim for benefits under the law of this State based on the
7 service provided to the employer.
- 8 (b) Non-applicability. – The term "employment" does not include any of the following:
- 9 (1) Employment as defined in the Railroad Retirement Act and the Railroad
10 Unemployment Insurance Act.
- 11 (2) The following services performed for a State or local governmental
12 employing unit or for an employing unit of an Indian tribe:
- 13 a. An elected official.
- 14 b. A member of a legislative body or a member of the judiciary.
- 15 c. A member of the North Carolina National Guard.
- 16 d. An employee serving on a temporary basis in case of fire, storm,
17 snow, earthquake, flood, or similar emergency. These services
18 include temporary emergency services compensated solely by a fixed
19 payment for each emergency call answered whether or not provided
20 for by prior agreement and training in preparation for such temporary
21 emergency service whether or not compensated.
- 22 e. An employee in a policymaking or advisory position the performance
23 of the duties of which ordinarily does not require more than eight
24 hours per week.
- 25 (3) Service with respect to which unemployment insurance is payable under an
26 employment security system established by an act of Congress. The Division
27 may enter into agreements with the proper agencies under such act of
28 Congress, which agreements shall become effective 10 days after publication
29 thereof in the manner provided in G.S. 96-4(b) for general rules, to provide
30 potential rights to benefits under this Chapter, acquired rights to
31 unemployment insurance under act of Congress, or who have, after acquiring
32 potential rights to unemployment insurance, under such act of Congress,
33 acquired rights to benefits under this Chapter.
- 34 (4) Services performed by an individual in the employ of a son, daughter, or
35 spouse.
- 36 (5) Services performed by a child under the age of 21 in the employ of his father
37 or mother or of a partnership consisting only of parents of the child.
- 38 (6) Service performed by an individual during any calendar quarter for an
39 employer as an insurance agent or as an insurance solicitor, or as a securities
40 salesman if all such service performed during such calendar quarter by such
41 individual for such employing unit or employer is performed for
42 remuneration solely by way of commission.
- 43 (7) Service performed by an individual for an employing unit as a real estate
44 agent or a real estate salesman as defined in G.S. 93A-2, provided, that such
45 real estate agent or salesman is compensated solely by way of commission
46 and is authorized to exercise independent judgment and control over the
47 performance of his work.
- 48 (8) Services performed in employment as a newsboy or newsgirl selling or
49 distributing newspapers or magazines on the street or from house to house.

- (9) Service covered by an election duly approved by the agency charged with the administration of any other state or federal employment security law in accordance with an arrangement pursuant to subdivision (l) of G.S. 96-4 during the effective period of such election.
- (10) Casual labor not in the course of the employing unit's trade or business.
- (11) Service in any calendar quarter in the employ of any organization exempt from income tax under the provisions of section 501(a) of the Internal Revenue Code, other than an organization described in section 401(a) of the Internal Revenue Code, or under section 521 of the Internal Revenue Code, if the remuneration for the service is less than fifty dollars (\$50.00).
- (12) Service in the employ of a school, college, or university, if the service is performed by one of the following:
- a. A student who is enrolled and is regularly attending classes at such school, college, or university.
- b. The spouse of a student described in this subdivision, if the spouse is advised, at the time the spouse commences to perform such service, both of the following:
1. The employment of the spouse to perform service is provided under a program to provide financial assistance to such student by such school, college, or university.
2. The employment will not be covered by any program of unemployment insurance.
- (13) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.
- (14) Services performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches.
- (15) Services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.
- (16) Services performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work.
- (17) Services performed as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency, an agency of a state or political subdivision thereof, or an Indian tribe, by an individual receiving the work relief or work training, unless a

1 federal law, rule or regulation mandates unemployment insurance coverage
2 to individuals in a particular work-relief or work-training program.

3 (18) Any of the following services performed by an inmate:

4 a. Services performed for a hospital in a State prison or other State
5 correctional institution.

6 b. Services performed as part of a work-release program.

7 c. Services performed at the custodial or penal institution.

8 (19) Services performed for a hospital by a patient in that hospital.

9 (20) Services performed by an individual on a boat engaged in catching fish or
10 other forms of aquatic animal life under a remuneration arrangement
11 described in this subdivision. In order to preserve the State's right to collect
12 State unemployment taxes for which a credit against federal unemployment
13 taxes may be taken for contributions paid into a State unemployment
14 insurance fund, this subdivision does not apply, with respect to any
15 individual, to service during any period for which an assessment for federal
16 unemployment taxes is made by the Internal Revenue Service pursuant to
17 the Federal Unemployment Tax Act which assessment becomes a final
18 determination. Services performed by an individual for remuneration based
19 upon the amount of the boat's catch of fish or other forms of aquatic animal
20 life or a share of the proceeds from the sale of such catch rather than cash.
21 This subdivision only applies if the operating crew of a boat in the fishing
22 operation is normally made up of fewer than 10 individuals. In the case of a
23 fishing operation involving more than one boat, the remuneration may be
24 based upon the catch of all the boats.

25 (21) Service performed by a full-time student in the employ of an organized camp
26 for less than 13 calendar weeks in the calendar year if the camp meets one of
27 the following conditions:

28 a. It did not operate for more than seven months in the calendar year
29 and did not operate for more than seven months in the preceding
30 calendar year.

31 b. It had average gross receipts for any six months in the preceding
32 calendar year which were not more than thirty-three and one-third
33 percent (33 1/3%) of its average gross receipts for the other six months
34 in the preceding calendar year.

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

40 (23) Services performed by an individual who is an alien having residence in a
41 foreign country which the individual has no intention of abandoning who
42 possesses a valid J-1 Visa and is present in the State for a period of six
43 months or less pursuant to the provisions of 8 U.S.C. §
44 1101(a)(15)(F)(J)(M)(Q).

45 (c) American vessel or aircraft. – The term employment includes a service of whatever
46 nature performed by an individual for an employing unit on or in connection with an American
47 vessel under a contract of service which is entered into within the United States or during the
48 performance of which the vessel touches at a port in the United States, if such individual is
49 employed on and in connection with such vessel when outside the United States: Provided,
50 such service is performed on or in connection with the operations of an American vessel

operating on navigable waters within or within and without the United States and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.

The term does not include service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if the individual is performing services on and in connection with such vessel or aircraft when outside the United States; or, service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by such individual as an ordinary incident to any such activity), except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (ii) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States).

(d) American aircraft. – The term employment includes any service of whatever nature performed by an individual for an employing unit on or in connection with an American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the aircraft it touches at a port in the United States, if such individual is employed on and in connection with such aircraft when outside the United States; provided such service is performed on or in connection with the operations of an American aircraft and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.

"§ 96-19.4. Employer.

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

- a. Employed one or more individuals within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within such calendar year.
- b. Paid wages of one thousand five hundred dollars (\$1,500) or more in any calendar quarter in either the current or preceding calendar year.

(b) Agricultural Labor. – With agricultural labor, the employer may be the crew leader or the farm operator. A crew leader may be the employer if the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act or if substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment provided by the crew leader. A farm operator is the employer of a worker hired by the farm operator, regardless of whether the worker is assigned to work with a crew or under the leadership of the crew leader. The farm operator is deemed to be the employer of all the workers when the crew leader does not qualify as an employer.

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

- a. Employed ten or more individuals in agricultural labor within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within such calendar year.
- b. Paid wages of twenty thousand dollars (\$20,000) or more in any calendar quarter in either the current or preceding calendar year.

(c) Domestic Service. – The term "employer" means an employing unit who paid wages to an individual of one thousand dollars (\$1,000) or more in any calendar quarter in the current

or preceding calendar year for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

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

- (1) Employment service company. – An employment service company that is taxed as an employer under the Federal Unemployment Tax Act.
- (2) American vessel. – An employing unit that meets at least one other description of an employer in this section and that maintains an operating office within this State from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled.
- (3) Election. – A person that has elected to become fully subject to this Chapter under G.S. 96-19.21.
- (4) Acquisition. – An employing unit who has acquired part or all of another employing unit who at the time of acquisition was an employer described in this section.
- (5) Governmental. – Any employing unit of the State or a local governmental unit. A governmental entity is not an employer by reason of hiring an intern.
- (6) Nonprofit organization. – An employing unit of a nonprofit organization that employed four or more individuals within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within such calendar year.
- (7) Indian tribe. – An employing unit of an Indian tribe, a subdivision or subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.
- (8) Federal requirement. – An employing unit liable for federal unemployment tax under the Federal Unemployment Tax Act or an employing unit required to be an employer under this Chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

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

- (1) The agent or employee is an employer subject to the tax imposed by the Federal Unemployment Tax Act, whether the individual was hired or paid directly by the employing unit or by the agent or employee of the employing unit.
- (2) The employing unit had actual or constructive knowledge of the work of the individual.

"§ 96-19.5. Wages.

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

- (1) Salaries, commissions, and bonuses.
- (2) Amounts paid under an order of a court, the National Labor Relations Board, or any other lawfully constituted adjudicative agency or by private agreement, consent, or arbitration for loss of pay by reason of discharge.
- (3) The cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than case must be estimated and determined in accordance with rules adopted by the

Division. If the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to unemployment benefits only must be determined in a manner that secures results reasonably similar to those that would prevail if the individual were paid wages at regular intervals.

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

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

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

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

(1) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement, sickness or accident disability, medical and hospitalization expenses in connection with sickness or accident disability, or death. However, in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, only payments which are received under a worker's compensation law shall be excluded from the term "wages".

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

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

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

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

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

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

purpose of supplementing unemployment benefits, provided that the plan has been approved by the Division.

"§ 96-19.6. Unemployed.

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

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

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

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

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

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

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

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

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

(c) Separation Payments. – An individual is not unemployed if, with respect to the entire calendar week, the individual receives or will receive as a result of the individual's separation from work remuneration in one or more of the forms listed in this subsection. An individual may be unemployed, as provided in subsection (b) of this section, if the individual is receiving payment applicable to less than the entire week.

(1) Wages in lieu of notice.

(2) Accrued vacation pay.

(3) Terminal leave pay.

(4) Severance pay.

(5) Separation pay.

(6) Dismissal payments or wages by whatever name.

"Part 2. Coverage.

"§ 96-19.20. Employers and employees.

(a) Coverage. – An employing unit that is an employer under this Article and employs individuals in an employment service covered under this Article must finance the unemployment benefits paid through the UI Fund and its employees accrue rights to unemployment benefits as provided in this Article.

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

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

"§ 96-19.21. Voluntary election.

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

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

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

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

"§ 96-19.22. Termination of coverage.

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

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

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

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

"Part 3. Contributions

"§ 96-19.30. Payment of Contributions.

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

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

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

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

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

An employer with 100 or more employees, and every person or organization that reports wages on a total of 100 or more employees as an agent on behalf of one or more subject

employers, must file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the Division. For failure of an employer to comply with this subsection, the Division must add to the amount required to be shown as tax in the reports a penalty of twenty-five dollars (\$25.00). For failure of an agent to comply with this subdivision, the Division may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The Division may reduce or waive a penalty for good cause shown.

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

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

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

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

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

(b) Other Rates. – The contribution rate for employers not covered under subsection (b) of this section is a percentage of taxable wages paid by the employer during a calendar year for employment occurring during that year. The percentage for employers whose reserve ratio is equal to zero is the rate set forth in the table below, divided by one hundred. The percentage for employers whose reserve ratio is not equal to zero is the applicable rate in the table below minus the employer's effective reserve ratio, divided by one hundred. The employer's effective reserve ratio is equal to the employer's reserve ratio multiplied by sixty-eight hundredths (0.68). The Division must round the rate to the nearest one-hundredth percent. The minimum contribution rate may not be less than six-tenths of one percent (0.06%) and the maximum contribution rate may not exceed five and seventy-sixths hundredths percent (5.76%).

<u>Trust Fund Balance</u>	<u>Contribution Rate</u>
<u>Less than or equal to 1% of total insured wages</u>	<u>2.7</u>
<u>Greater than 1% but less than or equal to 1.25%</u>	
<u>of total insured wages</u>	<u>2.4</u>
<u>Above 1.25% of total insured wages</u>	<u>1.9</u>

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

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

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

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

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

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

(e) Notification. – The Division must notify each employer of the employer's contribution rate for the succeeding calendar year by January 1 of the succeeding calendar year. The contribution rate becomes final unless the employer files an application for review and redetermination prior to May 1 following the effective date of the contribution rate. The Division may redetermine on its own motion within the same time period.

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

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

(b) Election. – An employer to whom this section applies must finance benefits under the contributions method of payment applicable to tax paying employers, unless it elects to finance benefits by making payments to the Division for the UI Fund in an amount equal to the amount which its account would be charged if it were a tax paying employer under G.S. 96-19.41.

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

The Department of Administration is the agency that may make an election with respect to financing benefits for State employers.

(c) Account. – The Division must establish a separate account for each reimbursing employer. The Division must credit payments made by the employer to the account. The Division must allocate benefits paid by the UI Fund to individuals for weeks of unemployment which begin within a benefit year established during the effective period of the election that are

1 attributable to service in the employ of the employer to the same extent its account would be
2 charged under G.S. 96-19.41 if it were a tax paying employer.

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

11 An employing unit paying by reimbursement having been, prior to July 1, under the
12 reimbursement method of payment for the preceding calendar year, must continue to file
13 quarterly reports but does not need to make a payment with those reports.

14 (e) Annual Reconciliation. – A reimbursing employer must maintain an account
15 balance equal to one percent (1%) of its taxable wages. The Division must determine the
16 balance of each employer's account as of August 1 of each year. The Division must furnish the
17 employer with a statement of all charges and credits to the account prior to January 1 of the
18 succeeding year.

19 If there is a deficit in the account, the Division must bill the employer for an amount
20 necessary to bring its account to one percent (1%) of its taxable wages. Any amount in the
21 account in excess of one percent (1%) of taxable wages will be retained in the employer's
22 account as a credit and will not be refunded to the employer. Amounts due from the employer
23 to bring its account to a one percent (1%) balance will be billed as soon as practical and
24 payment will be due within 30 days from the date of mailing of the statement of the amount
25 due.

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

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

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

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

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

50 **"§ 96-19.33. Indian tribes.**

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

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

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

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

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

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

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

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

(e) Collection Notice. – Notices to Indian tribe employing units of payment and reporting delinquency must include information that failure to make full payment within the time prescribed will cause the unit to become liable for contributions G.S. 96-19.30, will cause the unit to lose the option of making payment by reimbursement in lieu of contributions, and could cause the unit to lose coverage under this Chapter for services performed for the unit.

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

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

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

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

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

A tax is imposed upon employers to provide revenue for the purposes listed in G.S. 96-6.1. Taxes collected under this section must be credited to the Employment Security Reserve Fund and refunds of the taxes may be paid from the same fund. Any interest collected on unpaid taxes imposed by this section may be credited to the Special Employment Security Administration Fund, and any interest refunded on taxes imposed by this section may be paid from the same fund.

The tax does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the State's account in the Unemployment Trust Fund, established pursuant to section 903 of Title IX of the Social Security Act, equals or exceeds one billion dollars (\$1,000,000,000). The rate of the tax is as follows:

- (1) Contributions. – Twenty percent (20%) of the amount of contributions due under G.S. 96-19.30. Taxes payable under this subdivision are collected and administered in the same manner as contributions.
- (2) Reimbursements. – Twenty percent (20%) of the amount of quarterly taxable wages reported under G.S. 96-19.32. Taxes payable under this subdivision are due at the same time a quarterly wage report is filed.

Part 4. Experience Rating.

"§ 96-19.40. Employer account.

(a) Employer Account. – The Division must maintain a separate account for each employer. The Division must charge the employer's account for benefits, as provided in G.S. 96-19.41. The Division must credit the employer's account with all contributions paid by the employer or on the employer's behalf. Any voluntary contributions made by an employer

1 within 30 days after the date of mailing by the Division of notification of contribution rate, as
2 required by G.S. 96-19.30, will be credited to its account as of the previous July 31.

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

6 (c) Acquisition of Existing Business. – When an employer acquires all of the
7 organization, trade, or business of another employing unit, the account of the predecessor shall
8 be transferred as of the date of the acquisition to the successor employer for use in the
9 determination of the successor's rate of contributions. This mandatory transfer does not apply
10 when there is no common ownership between the predecessor and the successor and the
11 successor acquired the assets of the predecessor in a sale in bankruptcy. In this circumstance,
12 the successor's rate of contributions is determined without regard to the predecessor's rate of
13 contributions.

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

23 Whenever part of an organization, trade, or business is transferred between entities subject
24 to substantially common ownership, management, or control, the account must be transferred in
25 accordance with rules adopted by the Division. However, employing units transferring entities
26 with any common ownership, management, or control are not entitled to separate and distinct
27 employer status under this Chapter. Provided, however, that the transfer of an account for the
28 purpose of computation of rates is considered to have been made prior to the computation date
29 falling within the calendar year within which the effective date of such transfer occurs and the
30 account must be used in the computation of the rate of the successor employer for succeeding
31 years. No request for a transfer of the account will be accepted and no transfer of the account
32 will be made if the request for the transfer of the account is not received within two years of the
33 date of acquisition or notification by the Division of the right to request such transfer,
34 whichever occurs later. However, in no event will a request for a transfer be allowed if an
35 account has been terminated because an employer ceases to be an employer pursuant to
36 G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

37 (d) Contributions Credited to Wrong Account. – Whenever contributions are
38 erroneously paid into one account which should have been paid into another account or which
39 should have been paid into a new account, that erroneous payment can be adjusted only by
40 refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an
41 existing account may be made, nor can a new account be created by transferring any portion of
42 the erroneously paid amount, notwithstanding that the entities involved may be owned,
43 operated, or controlled by the same person or organization. No adjustment of a contribution rate
44 can be made reducing the rate below the standard rate for any period in which the account was
45 not in actual existence and in which it was not actually chargeable for benefits. Whenever
46 payments are found to have been made to the wrong account, refunds can be made to the entity
47 making the wrongful payment for a period not exceeding five years from the last day of the
48 calendar year in which it is determined that wrongful payments were made. Notwithstanding
49 payment into the wrong account, if an entity is determined to have met the requirements to be a
50 covered employer, whether or not the entity has had paid on the account of its employees any

sum into another account, the Division must collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years runs from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith.

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

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

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

(b) Charging of Benefits after Separation. – Any benefits paid to a claimant under a claim filed for a period occurring after the date of separation for one of the reasons listed in this subsection may not be charged to the account of an employer by whom the claimant was employed at the time of separation if the employer promptly notifies the Division, in accordance with rules adopted by the Division, of the applicable reason listed below for the separation:

- (1) The claimant left work without good cause attributable to the employer.
- (2) The claimant left work for compelling family reasons.
- (3) The employer discharged the claimant for misconduct in connection with his work.
- (4) The employer discharged the claimant solely for a bona fide inability to do the work for which the individual was hired and the claimant's period of employment was 100 days or less.
- (5) The separation is a disqualifying separation under G.S. 96-19.52.

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

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

- (2) Benefits paid as a result of a decision by the Division if the decision to pay benefits is ultimately reversed.
- (3) Any benefits paid to any claimant who is attending a vocational school or training program approved by the Division may not be charged to the account of the base period employers.
- (4) Any benefits paid to any claimant where all of the following conditions are met:
- a. The benefits are paid for unemployment due directly to a major natural disaster.
- b. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 USCA 4401, et seq.
- c. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act, if they had not received unemployment insurance benefits with respect to that unemployment.
- (d) **Fraudulent Overpayments. – (Effective October 1, 2013)** The Division must charge benefits to an employer's account when it determines that an overpayment has been made to a claimant and it determines that both of the conditions in this subsection apply. The prohibition on the noncharging of an employer's account under this subsection applies to each week of unemployment compensation that is an overpayment until the Division makes a determination that the claimant is no longer eligible for the overpaid amount and stops making the overpayment. If the claim is a combined-wage claim, the determination of noncharging for the combined-wage claim must be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying state must promptly notify the transferring state of its determination and the employer must be appropriately charged. The Division may waive the prohibition for good cause.
- (1) The overpayment occurred because the employer failed to respond timely or adequately to a written or electronic request of the Division for information relating to an unemployment compensation claim. A response is considered untimely if it fails to be made within the time allowed under G.S. 96-19.70(d). A response is considered inadequate if it fails to provide sufficient facts to enable the Division to make a correct determination of benefits. A response may not be considered inadequate if the Division fails to request the necessary information.
- (2) The employer exhibits a pattern of failure to respond timely or adequately by failing to respond to written requests from the Division for information relating to an unemployment compensation claim on two or more occasions. If an employer uses a third-party agent to respond on its behalf to the Division, then the actions of the agent must be considered when determining a pattern of failure to respond timely or adequately. A pattern is established based on the agent's behavior overall and not only with respect to its behavior related to the employer.
- "§ 96-19.42. Employer's reserve ratio.**
- (a) **Computation. –** On August 1 of each year, the Division must determine the balance of each employer's account and compute a reserve ratio for the employer. At the same time the Division notifies an employer of the employer's contribution rate for the succeeding calendar year, it must furnish the employer with a statement of all charges and credits made to the employer's account. The employer may file an application for review or redetermination prior to May 1 following the effective date of the contribution rate.

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

(c) Debit Reserve Ratio. – For each employer's whose account shows that the total of all its contributions paid and credited for all past periods together with all other lawful credits is less than the total benefits charged to its account for all past periods, the Division must compute a debit reserve ratio. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.

(d) Insufficient Employer Report. – If, within the calendar month in which the computation date occurs, the Division finds that any employing unit has failed to file a report or has filed a report which the Division finds incorrect or insufficient, the Division must make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time. The Division must notify the employing unit of the estimates it will use to compute the employer's reserve ratio by registered mail addressed to its last known address. The Division will compute the employing unit's reserve ratio and contribution rate based upon those estimates unless the employing unit files a report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of the notice. The rate as so determined may be increased on the basis of subsequently ascertained information, but it may not be reduced.

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

"Part 5. Benefit Eligibility

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

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

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

(2) Wages. – The individual has been paid wages totaling at least six times the average weekly insured wage during the individual's base period. If an individual lacks sufficient base period wages, the claimant may have an alternative base period substituted for the current base period.

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

"§ 96-19.51. Eligibility.

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

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

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

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

(1) Academic terms. – For any week commencing during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, if the individual performs services in the first of the academic years or terms and there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms.

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

(d) Individuals Employed by Educational Institutions in Non-Professional Capacity. – This subsection applies to individuals who provide services to or on behalf of an institution of higher education in any capacity other than a capacity described in subsection (f) of this section, regardless of whether the individual is employed by the institution or by an educational service agency. Benefits are not payable to an individual to whom this subsection applies for any week described below:

(1) Academic terms. – For any week commencing during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms,

during that period, if the individual performs services in the first of the academic years or terms and there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms. If benefits are denied to an individual under this subdivision and the individual was not offered an opportunity to perform such services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subdivision.

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

"§ 96-19.52. Disqualification for benefits.

(a) Disqualification Period. – A claimant's qualification for benefits is determined based on the reason for separation from employment from the individual's last permanent employer. The individual's last permanent employer is the employer for whom the claimant worked for more than 30 consecutive calendar days, regardless of whether the work was performed on all of those days. A claimant disqualified for benefits under this section may not receive any benefits for the unemployment benefit period.

(b) Voluntary Quit. – A claimant is disqualified for benefits if it is determined by the Division that the claimant is unemployed because the claimant left work without good cause attributable to the employer. Where a claimant leaves work, the burden of showing good cause rests on the claimant and the burden may not be shifted to the employer. Where an employee is notified by the employer that the employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee has left work voluntarily and the leaving is not considered good.

The following circumstances constitute good cause attributable to the employer:

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

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

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

The following examples are prima facie evidence of misconduct, which may be rebutted by the claimant:

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

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

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

- (4) Conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90 95(a)(1) or G.S. 90 95(a)(2) if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.
- (5) Being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.
- (6) Any physical violence whatsoever related to an employee's work for an employer, including physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.
- (7) Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment.
- (8) Theft in connection with the employment.
- (9) Forging or falsifying any document or data related to employment, including a previously submitted application for employment.
- (10) Violating an employer's written absenteeism policy.
- (11) Refusing to perform reasonably assigned work tasks or failing to adequately perform employment duties as evidenced by no fewer than three written reprimands in the 12 months immediately preceding the employee's termination.

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

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

- (1) The individual is customarily self-employed and can reasonably return to self-employment.
- (2) The individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale, one or more of the following existed:
 - a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation.
 - b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner.
 - c. The employing entity was a proprietorship, and the individual was a proprietor.

(f) Domestic violence. – A claimant may not be disqualified for benefits for leaving work for reasons of domestic violence if the claimant reasonably believes that the claimant's continued employment would jeopardize the safety of the claimant or of any member of the

claimant's immediate family. For the purposes of this subsection, a claimant may be a victim of domestic violence if one or more of the following applies:

- (1) The claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes.
- (2) There is evidence of domestic violence, sexual offense, or stalking. Evidence of domestic violence, sexual offense, or stalking may include any one or more of the following:
 - a. Law enforcement, court, or federal agency records or files.
 - b. Documentation from a domestic violence or sexual assault program if the claimant is alleged to be a victim of domestic violence or sexual assault.
 - c. Documentation from a religious, medical, or other professional from whom the claimant has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking.
- (3) The claimant has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by an individual who has or has had a familial relationship with the claimant or minor child.

(g) Military Spouse. – A claimant may not be disqualified for benefits for leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another.

"§ 96-19.53.Weekly certification.

(a) Requirements. – A claimant must meet all of the following requirements for each weekly benefit period:

- (1) File a claim for benefits.
- (2) Report at an employment office as requested by the Division.
- (3) Meet the work search requirements of subsection (b) of this section.

(b) Work Search Requirements. – A claimant is eligible to receive benefits with respect to any week only if the Division finds the claimant meets the following work search requirements:

- (1) The individual is able to work.
- (2) The individual is available to work.
- (3) The individual is actively seeking work.
- (4) The individual accepts suitable work when offered.

(c) Suitable Work. – The Division's determination of whether an employment offer is suitable must vary based upon the individual's length of unemployment as follows:

- (1) During the first ten weeks of a benefit period, the Division may consider the degree of risk involved to individual's health, safety, and morals; the individual's physical fitness and prior training and experience, the individual's prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and the individual's prior earnings.
- (2) During the second ten weeks of a benefit period, the Division must consider any employment offer paying 120% of the individual's weekly benefit amount to be suitable work.

(d) Positive Drug Test. – An individual is not available for work during any week that the individual tests positive for a controlled substance if all of the conditions of this subsection apply. An employer must report a claimant's positive test for a controlled substance to the Division.

(1) The test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes.

(2) The test is required as a condition of hire for a job.

(3) The job would be suitable work for the claimant.

(e) Incarceration. – An individual is not available for work during any week that the individual is incarcerated or has received notice to report or is otherwise detained in any state or federal jail or penal institution. This subsection does not apply to an individual who is incarcerated solely on a weekend in a county jail and who is otherwise available for work.

(f) Alien. – An individual who is not a citizen or national of the United States is not available for work unless the individual is in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and Naturalization Service.

(g) Disability. – An individual is not able to work during any week for which the individual is receiving or is applying for benefits under any other State or federal law based on the individual's temporary total or permanent total disability.

(h) Job Training. – An individual has satisfied the work search requirements for any given week if the Division determines for that week that one or more of the following applies:

(1) Trade Jobs for Success. – The individual is participating in the Trade Jobs for Success initiative under G.S. 143B-438.16.

(2) Reemployment Services. – The claimant is participating in the reemployment services as directed by the Division and is actively seeking work in a manner consistent with the planned reemployment services. The Division must refer a claimant to reemployment services if the Division finds that the claimant would likely exhaust regular benefits and need reemployment services to make a successful transition to new employment.

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

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

(j) Job Attachment. – The work search requirements may be waived for a claimant who is partially unemployed and for whom the employer has filed an attached claim for benefits. The waiver may only apply to the benefit period associated with the attached claim.

"§ 96-19.54. Disqualification for the duration of the benefit period.

(a) Duration. – A claimant disqualified from receiving benefits under this section is disqualified for the duration of the unemployment period, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits.

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

(1) To apply for available suitable work when so directed by the employment office of the Division.

(2) To accept suitable work when offered.

(3) To return to the individual's customary self-employment when so directed by the Division.

(c) Limitations on Suitable Work. – An otherwise eligible individual may not be denied benefits for a given week if the Division determines for that week that the individual refused to accept new work under any or more of the following conditions:

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

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

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

(4) For any week with respect to which the Division finds that his total or partial unemployment is caused by a labor dispute in active progress at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place within this State which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. An individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

(d) Recall after Layoff. – An individual is disqualified for benefits if it is determined by the Division that the individual is, at the time a claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff, or when recalled in any week in which the work search requirements under G.S. 96-19.53 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employee's payroll and is a continuing employee subject to recall by the employer.

(e) Refusal to Attend Training Program. – When the Division has directed a claimant to attend a vocational school or training program, the individual is disqualified for benefits if it is determined by the Division that any one or more of the following has occurred:

(1) The individual has failed without good cause to attend the vocational school or training program.

(2) The individual has discontinued the training course without good cause.

(3) The individual is separated from the training course or vocational school due to misconduct.

"§ 96-19.55. Disqualification for any given week of benefits.

(a) Failure to Meet Work Search Requirements. – A claimant is disqualified from receiving benefits for any week with respect to which the individual fails to file a claim and meet the work search requirements required under G.S. 96-19.55.

(b) Private Unemployment Benefits. – A claimant is disqualified from receiving benefits for any week with respect to which the individual has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount paid by the employer is in a lump sum and covers a period of more than one week, the amount paid is allocated to the weeks in the period on such a pro rata basis as the Division may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-19.60, the claimant is entitled to receive a reduced payment if the claimant was otherwise eligible.

Any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made constitutes an overpayment of benefits and the amount of overpayment must be deducted from the award by the employer prior to payment to the employee, and transmitted within 5 days to the Division by the employer for application against the overpayment. Any amount of overpayment deducted by the employer and not transmitted to the Division, or the failure of an employer to deduct an overpayment, will be subject to the same procedures for collection as is provided for contributions. The removal of any charges made against the employer as a result of any previously paid benefits must be applied to the calendar year in which the overpayment is transmitted to the Division, and no attempt will be made to relate the credit to the period to which the award applies.

(c) Disciplinary Suspension. – A claimant is disqualified from receiving benefits for any week during any part of which the Division finds that work was not available to the individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work. A single disciplinary suspension does not disqualify any claims week beginning after thirty (30) consecutive calendar days of the suspension. If the individual is still suspended after thirty (30) consecutive calendar days, the individual is considered to have been discharged from work because of the acts or omissions that caused the suspension.

"Part 6. Benefits.

"§ 96-19.60. Weekly benefit amount.

(a) Payable. – Benefits must be paid through employment offices, in accordance with rules adopted by the Division. The Division must establish and maintain individual wage record accounts for each individual who earns wages in covered employment for as long as the wages would be included in a determination of benefits.

(b) Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally unemployed is an amount equal to the wages paid to the individual in the last two completed quarters of the individual's base period divided by 52 and rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits. The weekly benefit amount may not exceed three hundred fifty dollars (\$350.00).

The weekly benefit amount for an individual who is partially unemployed or part-totally employed is a portion of the individual's weekly benefit amount. The portion payable is the difference between the individual's weekly benefit amount and any part of the wages or remuneration that is payable to the individual for a week for which benefits are claimed and that exceeds twenty percent (20%) of the individual's weekly benefit amount. If the amount so calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar.

Payments received by an individual under a supplemental benefit plan do not affect the computation of the individual's partial weekly benefit.

(d) Retirement Deduction. – The amount of benefit payable to an individual for any week that begins in a period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individual must be reduced by the amounts of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week or which is contributed to in part or in total by the individual's base period employers. The amount of all payments received by an individual under the Railroad Retirement Act must be deducted from the individual's benefit amount. Any weekly benefit amounts reduced under this subsection must be rounded to the nearest lower full dollar amount. The amount may not be reduced below zero.

(e) Income Tax Withholding. – Unemployment compensation is subject to federal and State individual income tax. The Division must follow the procedures specified by the United States Department of Labor, the Internal Revenue Service, and the Department of Revenue pertaining to the deducting and withholding of individual income tax. The amounts deducted and withheld from unemployment compensation remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. If two or more deductions are made from an individual's unemployment compensation payment, then the deductions will be deducted and withheld in accordance with priorities established by the Division.

When an individual files a new claim for unemployment compensation, the individual must be advised in writing at the time of filing that:

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

"§ 96-19.61. Duration of benefits.

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

- (1) Divide the individual's base-period wages by the average of the wages paid to the individual in the last two completed quarters of the base period.
- (2) Multiplying that quotient by eight and two-thirds.
- (3) Round the product to the nearest whole number.
- (4) Multiply the resulting amount by the individual's weekly benefit amount as determined under G.S. 96-19.60.

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

(1) The individual's average weekly benefit amount multiplied by the maximum number of weeks allowed under the table in subsection (c) of this section.

(2) The individual's total benefit allowed, as calculated under subsection (a) of this section.

(c) Unemployment Rate in Use. – The minimum and maximum number of weeks allowed for a claim filed during a six-month base period depends on the seasonal adjusted statewide unemployment rate in use for that base period. One six-month base period begins on July 1 and one six-month base period begins on January 1. For the period beginning July 1, the Division must use the most recently available seasonal adjusted unemployment rate for the State for the preceding month of April, as determined by U.S. Department of Labor, Bureau of Labor Statistics. For the base period that begins January 1, the Division must use the most recently available seasonal adjusted unemployment rate for the preceding month of October.

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

"§ 96-19.62. Extended benefits.

(a) Federally Required. – The State must provide an extended benefit period for a period beginning the third week after a week for which there is an "on" indicator and ends with the later of the third week after the first week for which there is an "off" indicator or the 13th consecutive week of such period. No extended benefit period may begin before the 14th week following the end of a prior extended benefit period which was in effect with respect to this State.

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

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

b. Equaled or exceeded five percent (5%).

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

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

b. Was less than five percent (5%).

(b) 100% Federally Funded. – The State may only provide an extended benefit period as defined in this subsection if the federal government funds one hundred percent (100%) of the costs of the extended benefits.

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

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

(c) Charging. – The state portions of the extended benefits paid are chargeable to the account of governmental entities or other employers not liable for FUTA taxes who are the base period employers. The portion of the extended benefits that paid by federal funds are not chargeable in any percentage to an employer's account. The portion of extended benefits that are paid by funds from the State's account in the Unemployment Trust Fund are chargeable to the account of the employer to the same extent regular benefits payable to the claimant are chargeable to the account of the employer under G.S. 96-XX.

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

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

Part 7. Administration.

"§ 96-19.70. Claims for benefits.

(a) Filing-Generally. – Claims for benefits ~~shall must~~ be made in accordance with ~~such regulations as the Division may prescribe~~ rules adopted by the Division. ~~Employers may file claims for employees through the use of automation in the case of partial unemployment. Each employing unit shall must post and maintain in places readily accessible to individuals performing services for it printed statements, information concerning benefit rights, claims for benefits, and such other matters relating to the administration of this Chapter as the Division may direct. Each employing unit shall must supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the Division may direct. Such~~ The Division must supply an employing unit with any printed statements and other materials

shall be supplied by the Division. The Division requires an employing unit provide to individuals to each employing unit without cost to the employing unit.

(a1) Attached Claims. – An employer may file claims for employees through the use of automation in the case of partial unemployment. An employer may only file an attached claim for an employee once during a calendar year and the period of partial unemployment for which the claim is filed may not exceed two hundred and forty (240) hours. To file an attached claim, an employer must make a voluntary contribution to the UI Fund for the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. An employer may file an attached claim under this subsection only if the employer meets one of the two following conditions:

(1) Positive credit balance. – The employer has a positive credit balance in its account under G.S. 96-XX.

(2) Negative credit balance. – The employer makes a voluntary contribution to the UI Fund in an amount equal to the amount necessary to bring the employer's negative credit balance to at least zero at the time the employer files the attached claim.

(b) ~~(1) Initial~~

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

At

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

(2) Adjudication. –

(d) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant ~~under G.S. 96-13, under Part 5 of this Article,~~ or whether any disqualification should be imposed under ~~G.S. 96-14, Part 5 of this Article,~~ or benefits denied or adjusted ~~pursuant to G.S. 96-18, under Parts 5 or 6 of this Article,~~ the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the

1 issues, including telephone conversations, and after such consideration shall render a
2 conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant
3 and all other interested parties of the conclusion reached. The conclusion of the adjudicator
4 shall be deemed the final decision of the Division unless within 30 days after the date of
5 notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant
6 to rules adopted by the Division. The Division shall be deemed an interested party for such
7 purposes and may remove to itself or transfer to an appeals referee the proceedings involving
8 any claim pending before an adjudicator.

9 ~~Provided, any~~

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

20 ~~An~~

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

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

grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the Board of Review may dismiss the appeal.

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

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

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

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

(e) Review by the Board of Review. – The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeals referee, hearing officer, or other employee assigned to make a decision on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Board of Review finds appropriate. The Board of Review may remove itself or transfer to an appeals referee, hearing officer, or other employee assigned to make a decision the proceedings on any claim pending before an appeals referee, hearing officer, or other employee assigned to make a decision. Interested parties shall be promptly notified of the findings and decision of the Board of Review.

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

All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the recording is waived by all interested parties. If the testimony is recorded, it need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such rules as the Division may adopt, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such reasonable fee for the transcript as the Division may by regulation provide. The fee so prescribed by the Division for a party shall not exceed the lesser of sixty-five cents (65) per page or sixty-five dollars (\$65.00) per transcript. The Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the Division shall waive the fee.

The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer, or other employee assigned to make the decision believes the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision may accept the stipulation and render a decision based on the

1 stipulation. If the appeals referee, hearing officer, or other employee assigned to make the
2 decision does not believe the stipulation provides sufficient information to make a decision,
3 then the appeals referee, hearing officer, or other employee assigned to make the decision must
4 reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded
5 hearing.

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

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

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

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

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

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

"§ 96-19.71. Seasonal pursuits.

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

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

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

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

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

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

(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.

(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. 96-12(d) of this Chapter, 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. 96-12(d) of this Chapter, 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. 96-12(d) of this Chapter.

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

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

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

(h) Calculation of Benefits. – The benefits payable to any otherwise eligible individual shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a seasonal determination applying to a pursuit by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in such base period.

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

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

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

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

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

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

(5) ~~"Seasonal wages" mean the~~ Seasonal wages. – The wages earned in a seasonal pursuit within its active period or periods. The Division may

prescribe by regulation the manner in which seasonal wages shall be reported.

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

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

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

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

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

"§ 96-19.72. Protection of witnesses from discharge, demotion, or intimidation.

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

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

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

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

"§ 96-19.73. Protection of witness before the Employment Security Commission.

If any person shall by threats, menace, or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any proceeding brought under the Employment Security Act, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such proceeding, he shall be guilty of a Class 1 misdemeanor."

"§ 96-19.74. Protection of rights and benefits; attorney representation; prohibited fees; deductions for child support obligations.

(a) Waiver of Rights Void. – Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of individuals in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) or be imprisoned for not more than six months, or both.

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

(b1) Fees Prohibited. – Except as otherwise provided in this Chapter, no individual claiming benefits in any administrative proceeding under this Chapter shall be charged fees of

any kind by the Division or its representative, and in any court proceeding under this Chapter each party shall bear its own costs and legal fees.

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

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

a. "Unemployment compensation" means any compensation found by the Division to be payable to an unemployed individual under the Employment Security Law of North Carolina (including amounts payable by the Division pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment) provided, that nothing in this subsection shall be construed to limit the Division's ability to reduce or withhold benefits, otherwise payable, under authority granted elsewhere in this Chapter including but not limited to reductions for wages or earnings while unemployed and for the recovery of previous overpayments of benefits.

b. "Child support obligation" includes only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

c. "State or local child support enforcement agency" means any agency of this State or a political subdivision thereof operating pursuant to a plan described in subparagraph b. above.

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

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

1. The amount specified by the individual to the Division to be deducted and withheld under this paragraph if neither

- 1 subparagraph 2. nor subparagraph 3. of this paragraph is
2 applicable; or
- 3 2. The amount, if any, determined pursuant to an agreement
4 submitted to the Division under section 454(20)(B)(i) of the
5 Social Security Act by the State or local child support
6 enforcement agency, unless subparagraph 3. of this paragraph
7 is applicable; or
- 8 3. Any amount otherwise required to be so deducted and
9 withheld from such unemployment compensation pursuant to
10 properly served legal process, as that term is defined in
11 section 462(e) of the Social Security Act.
- 12 c. Any amount deducted and withheld under paragraph b. of this
13 subdivision shall be paid by the Division to the appropriate State or
14 local child support enforcement agency.
- 15 d. The Department of Health and Human Services and the Division are
16 hereby authorized to enter into one or more agreements which may
17 provide for the payment to the Division of the processing fees
18 referred to in subparagraph b. and the payment to the Department of
19 Health and Human Services of unemployment compensation benefits
20 withheld, referred to in subparagraph c., on an open account basis.
21 Where such an agreement has been entered into, the processing fee
22 shall be deemed to have been made and received (for the purposes of
23 fixing the date on which the Division will begin withholding
24 unemployment compensation benefits) on the date a written
25 authorization from the Department of Health and Human Services to
26 charge its account is received by the Division. Such an authorization
27 shall apply to all processing fees then or thereafter (within the then
28 current benefit year) chargeable with respect to any individual name
29 in the authorization. Any agreement shall provide for the
30 reimbursement to the Division of any start-up costs and the cost of
31 providing notice to the Department of Health and Human Services of
32 any disclosure required by subparagraph a. Such an agreement may
33 dispense with the notice requirements of subparagraph a. by
34 providing for a suitable substitute procedure, reasonably calculated to
35 discover those persons owing child support obligations who are
36 eligible for unemployment compensation payments.
- 37 (3) Any amount deducted and withheld under paragraph (2) of this subdivision
38 shall, for all purposes, be treated as if it were paid to the individual as
39 unemployment compensation and then paid by such individual to the State
40 or local child support enforcement agency in satisfaction of the individual's
41 child support obligations.
- 42 (4) a. On or before April 1 of 1983 and each calendar year thereafter, the
43 Division shall set and forward to the Secretary of Health and Human
44 Services for use in the next fiscal year, a schedule of processing fees
45 for the withholding and payment of unemployment compensation as
46 provided for in this subsection, which fees shall reflect its best
47 estimate of the administrative cost to the Division generated thereby.
- 48 b. At least 20 days prior to September 25, 1982, the Division shall set
49 and forward to the Secretary of Health and Human Services an
50 interim schedule of fees which will be in effect until July 1, 1983.

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

Part 8. Enforcement

§ 96-19.80. Penalties.

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

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

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

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a Class 1 misdemeanor; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

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

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and

continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

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

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

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

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

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

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

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

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

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

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

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

- a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the Division, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Chapter.
- b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for

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

1 claimant. Additionally, the Division or its designated representatives
2 in the collection of overpayments shall have the powers enumerated
3 in G.S. 96-10(b)(2) and (3).

4 c. Any person who has been found by the Division to have been
5 overpaid under subparagraph (1) above shall be liable to have such
6 sums deducted from future benefits payable to him under this
7 Chapter.

8 d. Any person who has been found by the Division to have been
9 overpaid under subparagraph (2) above shall be liable to have such
10 sums deducted from future benefits payable to him under this
11 Chapter in such amounts as the Division may by regulation prescribe
12 but no such benefit payable for any week shall be reduced by more
13 than fifty percent (50%) of that person's weekly benefit amount.

14 e. To the extent permissible under the laws and Constitution of the
15 United States, the Division is authorized to enter into or cooperate in
16 arrangements or reciprocal agreements with appropriate and duly
17 authorized agencies of other states or the United States Secretary of
18 Labor, or both, whereby: (1) Overpayments of unemployment
19 benefits as determined under subparagraphs (1) and (2) above shall
20 be recovered by offset from unemployment benefits otherwise
21 payable under the unemployment compensation law of another state,
22 and overpayments of unemployment benefits as determined under the
23 unemployment compensation law of such other state shall be
24 recovered by offset from unemployment benefits otherwise payable
25 under this Chapter; and, (2) Overpayments of unemployment benefits
26 as determined under applicable federal law, with respect to benefits
27 or allowances for unemployment provided under a federal program
28 administered by this State under an agreement with the United States
29 Secretary of Labor, shall be recovered by offset from unemployment
30 benefits otherwise payable under this Chapter or any such federal
31 program, or under the unemployment compensation law of another
32 state or any such federal unemployment benefit or allowance
33 program administered by such other state under an agreement with
34 the United States Secretary of Labor if such other state has in effect a
35 reciprocal agreement with the United States Secretary of Labor as
36 authorized by Section 303(g)(2) of the federal Social Security Act, if
37 the United States agrees, as provided in the reciprocal agreement
38 with this State entered into under such Section 303(g)(2) of the
39 Social Security Act, that overpayments of unemployment benefits as
40 determined under subparagraphs (1) and (2) above, and overpayment
41 as determined under the unemployment compensation law of another
42 state which has in effect a reciprocal agreement with the United
43 States Secretary of Labor as authorized by Section 303(g)(2) of the
44 Social Security Act, shall be recovered by offset from benefits or
45 allowances for unemployment otherwise payable under a federal
46 program administered by this State or such other state under an
47 agreement with the United States Secretary of Labor.

48 f. The Division may in its discretion decline to collect overpayments to
49 claimants if the claimant has deceased after the payment was made.

1 In such a case the Division may remove the debt of the deceased
2 claimant from its records.

3 (h) **(Effective October 1, 2013)** Mandatory Federal Penalty. – A person who has been
4 held ineligible for benefits under subsection (e) of this section and who, because of those same
5 acts or omissions, has received any sum as benefits under this Chapter to which the person is
6 not entitled shall be assessed a penalty in an amount equal to fifteen percent (15%) of the
7 amount of the erroneous payment. The penalty amount shall be payable to the Unemployment
8 Insurance Fund. The penalty applies to an erroneous payment made under any State program
9 providing for the payment of unemployment compensation as well as an erroneous payment
10 made under any federal program providing for the payment of unemployment compensation.
11 The notice of determination or decision advising the person that benefits have been denied or
12 adjusted pursuant to subsection (e) of this section must include the reason for the finding of an
13 erroneous payment, the penalty amount assessed under this subsection, and the reason the
14 penalty has been applied.

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

20 **§ 96-19.81. Enforcement of Employment Security Law discontinued upon repeal or**
21 **invalidation of federal acts; suspension of enforcement provisions contested.**

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

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

42 The funds remaining available for use by the Division of Employment Security shall be
43 expended, as necessary, in making payment of all such awards as have been made and are fully
44 approved at the date aforesaid, and the payment of the necessary costs for the further
45 administration of this Chapter, and the final settlement of all affairs connected with same. After
46 complete payment of all administrative costs and full payment of all awards made as aforesaid,
47 any and all moneys remaining to the credit of any employer shall be refunded to such
48 employer, or his duly authorized assignee: Provided, that the State employment service, created
49 by Chapter 106, Public Laws of 1935, and transferred by Chapter 1, Public Laws of 1936, Extra
50 Session, and made a part of the former Employment Security Commission of North Carolina,

and that is now part of the Division of Employment Security of the North Carolina Department of Commerce, shall in such event return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the Division, the said State employment service shall render such service in connection therewith as shall be demanded or required under the provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

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

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

SECTION 4.(b) G.S. 96-19.30 and G.S. 96-19.31, as enacted by subsection (a) of this section, become effective January 1, 2014, and apply to taxable years beginning on or after that date. The remainder of subsection (a) of this section becomes effective July 1, 2013, and applies to claims for benefits filed on or after that date. The remainder of this section is effective when it becomes law.

SECTION 5.(a) A Joint Legislative Oversight Committee on Unemployment Insurance is established. The Committee consists of eight members: four of whom are appointed by the President Pro Tempore of the Senate and four of whom are appointed by the Speaker of the House of Representatives. The Committee may meet upon the call of the chairs. The Committee is directed to examine the unemployment insurance laws, to review the workforce development programs and reemployment assistance efforts of the Division of Employment Security, Department of Commerce, to monitor the payment of the \$2.5 billion debt owed by the Unemployment Trust Fund to the federal government, and to study the adequacy of the balances in the Unemployment Trust Fund and the Employment Security Reserve Fund. The Committee may report its findings and recommend changes in the unemployment insurance laws to the General Assembly.

SECTION 5.(b) This section is effective when it becomes law and expires July 1, 2023.

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.