GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-2
HOUSE BILL 4

AN ACT TO ADDRESS THE UNEMPLOYMENT INSURANCE DEBT AND TO 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SECTION 1.(a) G.S. 96-5(c), (d), (e), (f), and (g) are repealed.

SECTION 1.(b) Article 1 of Chapter 96 of the General Statutes, as amended by subsection (a) of this section, reads as rewritten:

"Article 1.
"Definitions and Funds.

"§ 96-1. Title and definitions.

(a) Title. – This Chapter shall be known and may be cited as the "Employment Security Law."

(b) Definitions. – The following definitions apply in this Chapter:

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

(2) Average weekly insured wage. – The weekly rate obtained by dividing the total wages reported by all insured employers for a calendar year by the average monthly number of individuals in insured employment during that year and then dividing that quotient by 52.

(3) Base period. – The first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(4) Benefit. – Compensation payable to an individual with respect to the individual's unemployment.

(5) Benefit year. – The fifty-two-week period beginning with the first day of a week with respect to which an individual first files a valid claim for benefits and registers for work. 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 individual filed a valid claim for benefits and registered for work.

(6) Code. – Defined in G.S. 105-228.90.

(7) Computation date. – August 1 of each year.

(8) Department. – The North Carolina Department of Commerce.

(9) Division. – The Department's Division of Employment Security.

(10) Employee. – Defined in section 3306 of the Code.

(11) Employer or employing unit. – Any of the following:

a. An employer as defined in section 3306 of the Code.

b. A State or local governmental unit required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

c. A nonprofit organization required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

d. An Indian tribe required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

(12) Employment. – Defined in section 3306 of the Code, with the following additions and exclusions:

a. Additions. – The term includes service to a governmental unit, a nonprofit organization, or an Indian tribe as described in 3306(c)(7) and 3306(c)(8) of the Code.

b. Exclusions. – The term excludes all of the following:

1. Service performed by an independent contractor.

2. Service performed for a governmental entity or nonprofit organization under 3309(b) and 3309(c) of the Code.

3. Service by one or more of the following individuals if the individual is authorized to exercise independent judgment and control over the performance of the work and is compensated solely by way of commission:

A. A real estate broker, as defined in G.S. 93A-2.

B. A securities salesman, as defined in G.S. 78A-2.

(13) Employment security law. – A law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits.

(14) Employment service company. – A person that contracts with a client or customer to supply an individual to perform employment services for the client or customer and that both under contract and in fact meets all of the following conditions:

a. Negotiates with the client or customer on such matters as time, place, and type of work, working conditions, quality, and price of the employment services.

b. Determines the assignment of an individual to the client or customer, even if the individual retains the right to refuse a specific assignment.

c. Hires and terminates an individual supplied.

d. Sets the rate of pay for the individual supplied.

e. Pays the individual supplied.

(15) Federal Unemployment Tax Act (FUTA). – Chapter 23 of the Code.

(16) Full-time student. – Defined in section 3306 of the Code.

(17) Governmental unit. – The term includes all of the following:

a. The State, a county, or a municipality, or any department, agency, or other instrumentality of one of these entities.

b. The State Board of Education, the Board of Trustees of The University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, a local board of education, or another entity that pays a teacher at a public school or educational institution.

c. A special district, an authority, or another entity exercising governmental authority.

d. An alcoholic beverage control board, an airport authority, a housing authority, a regional authority, or another governmental authority created pursuant to an act of the General Assembly.

(18) Immediate family. – An individual's spouse, child, grandchild, parent, and grandparent, whether the relationship is a biological, step-, half-, or in-law relationship.

(19) Independent contractor. – An individual who contracts to do work for a person and is not subject to that person'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.

(20) Indian tribe. – Defined in section 3306 of the Code.

(21) 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.

(22) 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.

(23) Secretary. – The Secretary of the Department of Commerce or the Secretary's designee.

(24) Taxable wages. – The amount determined under G.S. 96-9.3.
(25) Unemployed. – Defined in G.S. 96-15.01.
(26) Unemployment Trust Fund. – The federal fund established pursuant to section 904 of the Social Security Act, as amended.
(27) United States. – Defined in section 3306 of the Code.
(28) Wages. – Defined in section 3306 of the Code, except that no amount is excluded as provided under subdivision (b)(1) of that section.

...

"§ 96-4.1. Funds used in administering the unemployment compensation laws.

Four funds are established to administer this Chapter. The State Treasurer is responsible for investing all revenue received by the funds as provided in G.S. 147-69.2 and G.S. 147-69.3. Interest and other investment income earned by a fund accrues to it. Payments from a fund may be made only upon the warrant of the Secretary of Commerce.

The four funds are:

(1) The Employment Security Administration Fund established under G.S. 96-5.
(2) The Supplemental Employment Security Administration Fund established under G.S. 96-5.1.
(3) The Unemployment Insurance Fund established under G.S. 96-6.
(4) The Unemployment Insurance Reserve Fund established under G.S. 96-6.1.

"§ 96-5. Employment Security Administration Fund.

(a) Fund Established. – The Employment Security Administration Fund is created as a special revenue fund. The fund consists of the following:

(1) Moneys appropriated by this State.
(2) Moneys received from the United States or another source for the administration of this Chapter.
(3) Moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to the agency or state.
(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 the fund.
(5) Proceeds realized from the sale or disposition of equipment or supplies purchased from moneys in the fund.

(b) Use of Fund. – Moneys in the Employment Security Administration Fund may be used by the Division only to administer this Chapter. Moneys received in the fund from a source other than an appropriation by the General Assembly are appropriated for the purpose of administering this Chapter. The Secretary is authorized to requisition and receive from the State's account in the Unemployment Trust Fund any moneys standing to the State's credit that are permitted by federal law to be used for administering this Chapter and to expend the moneys for this purpose, without regard to a determination of necessity by a federal agency.

"§ 96-5.1. Supplemental Employment Security Administration Fund.

(a) Fund Established. – The Supplemental Employment Security Administration Fund is created as a special revenue fund. The fund consists of all interest paid under this Chapter by employers on overdue contributions and any appropriations made to the fund by the General Assembly.

(b) Use of Funds. – Moneys in the Supplemental Employment Security Administration Fund may be used by the Division only for one or more of the purposes listed below and may not be used in lieu of federal funds made available to the Division for the administration of this Chapter:

(1) The payment of costs and charges of administration that the Secretary of Labor determines are not eligible for payment from or were improperly paid from the Employment Security Administration Fund. The Supplemental Employment Security Administration Fund must reimburse the Employment Security Administration Fund for the amount of any improper payment. If the balance in the Supplemental Fund is insufficient, the Secretary must notify the Governor, who must request an appropriation for that purpose.
(2) The temporary stabilization of federal funds cash flow.
(3) Security for loans from the Unemployment Trust Fund.

(4) The refund of an overpayment of interest previously credited to the fund. If an employer takes credit for a previous overpayment of interest when remitting contributions, the amount of credit taken for the overpayment of interest must be reimbursed to the Unemployment Insurance Fund.

"§ 96-6. Unemployment Insurance Fund.

(a) Establishment and Use. – The Unemployment Insurance Fund is established as an enterprise fund. The Division must administer the fund exclusively for the purposes of this Chapter. No money in the fund may be used, directly or indirectly, to pay interest on an advance received from the Unemployment Trust Fund.

This fund consists of the following sources of revenue:

(1) Contributions collected under this Chapter.(2) Property or securities acquired through the use of moneys belonging to the fund.
(3) Interest and investment earnings of the fund.
(4) Moneys received from this State's account in the Unemployment Trust Fund in accordance with Title XII of the Social Security Act, as amended.
(5) Moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, asamended.
(6) Moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970.
(7) Reimbursement payments in lieu of contributions.
(8) Amounts transferred from the Unemployment Insurance Reserve Fund.

(b) Accounts. – The State Treasurer must maintain within the fund three separate accounts:

(1) A clearing account.(2) An unemployment trust fund account.(3) A benefit account.

(b1) Clearing Account. – The Division must credit moneys payable to the Unemployment Insurance Fund to the clearing account. The Controller must immediately deposit amounts in the clearing account with the secretary of the treasury of the United States to the credit of the account of this State in the Unemployment Trust Fund.

(b2) Unemployment Trust Fund Account. – The unemployment trust fund account consists of moneys requisitioned from the State's account in the Unemployment Trust Fund to make refunds of overpayments of contributions. To obtain funds needed to make refunds, the Controller must requisition the amount needed from the Unemployment Trust Fund and credit the amount received to this account.(c) Benefit Account. – The benefit account consists of moneys requisitioned from the State's account in the Unemployment Trust Fund to pay benefits. To obtain funds to pay benefits under this Chapter, the Controller must requisition the amount needed from the State's account in the Unemployment Trust Fund and credit the amount received to this account. Warrants for the payment of benefits are payable from this account. Amounts in the benefit account that are not needed to pay the benefits for which they were requisitioned may be applied to the payment of benefits for succeeding periods or, in the discretion of the Controller, deposited to the credit of the State's account in the Unemployment Trust Fund.(d) Discontinuance of Unemployment Trust Fund. – If the Unemployment Trust Fund or the State's account within the federal Fund ceases to exist, the credit balance of the State's account in that Fund must be transferred to the Unemployment Insurance Fund and credited to the benefit account.

"§ 96-6.1. Unemployment Insurance Reserve Fund.

(a) Establishment and Use. – The Unemployment Insurance Reserve Fund is established as a special revenue fund. The Fund consists of the revenues derived from the surtax imposed under G.S. 96-9.7. Moneys in the Fund may be used only for the following purposes:

(1) Interest payments required on advances under Title XII of the Social Security Act.
(2) Principal payments on advances under Title XII of the Social Security Act.
(3) Transfers to the Unemployment Insurance Fund for payment of benefits.
(4) Administrative costs for the collection of the surtax.
(5) Refunds of the surtax.

(b) Fund Capped. – The balance in the Unemployment Insurance Reserve Fund on January 1 of any year 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 2.(a) The following statutes are repealed: G.S. 96-8, 96-9, 96-11, 96-12, 96-12.1, 96-13, and 96-14.

SECTION 2.(b) Article 2 of Chapter 96 of the General Statutes, as amended by subsection (a) of this section, reads as rewritten:

"Article 2.

"Contributions and Payments by Employers....

"§ 96-9.1. Purpose.

The purpose of this Article is to provide revenue to finance the unemployment benefits allowed under this Chapter and to do so in as simple a manner as possible by imposing a State unemployment tax that is similar to the federal unemployment tax imposed under FUTA. All employers that are liable for the federal unemployment tax on wages paid for services performed in this State and all employers that are required by FUTA to be given a state reimbursement option are liable for a State unemployment tax on wages. Revenue from this tax, referred to as a contribution, is credited to the Unemployment Insurance Fund established in G.S. 96-6.

"§ 96-9.2. Required contributions to the Unemployment Insurance Fund.

(a) Required Contribution. – An employer is required to make a contribution in each calendar year to the Unemployment Insurance Fund in an amount equal to the applicable percentage of the taxable wages the employer pays its employees during the year for services performed in this State. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed.

The applicable percentage for an employer is considered the employer's contribution rate and is determined by the employer's base rate and the balance in the Unemployment Insurance Fund as of the computation date. Taxable wages are determined in accordance with G.S. 96-9.3. An employer's base rate is either the standard beginning rate or an experience rating. An employer's experience rating is computed as a reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate.

(b) Standard Beginning Rate. – The standard beginning rate applies to an employer until the employer's 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 and these quarters are in two consecutive calendar years.

(c) Contribution Rate. – The contribution rate for an employer is determined in accordance with the table set out below and then rounded to the nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on July 31 preceding the computation date.

Employer's Base Rate	**UI Trust Fund Balance as Percentage of Total Insured Wages**	**Contribution Rate**
Standard Beginning Rate	All balances	1%
Experience Rating	Less than or equal to 1%	2.9% minus ERRP
	Greater than 1% but less than or equal to 1.25%	2.4% minus ERRP
	Greater than 1.25%	1.9% minus ERRP

(d) Notification of Contribution Rate. – The Division must notify an employer of the employer's contribution rate for a calendar year by January 1 of that 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 the contribution rate on its own motion within the same time period.

(e) Voluntary Contribution. – An employer that is subject to this section may make a voluntary contribution to the Unemployment Insurance Fund in addition to its required contribution. A voluntary contribution is credited to the employer's account. A voluntary contribution made by an employer within 30 days after the date on an annual notice of its contribution rate is considered to have been made as of the previous July 31.

"§ 96-9.3. Determination of taxable wages.

(a) Determination. – The Division must determine the taxable wages for each calendar year. An employer is not liable for contributions on wages paid to an employee in excess of taxable wages. The taxable wages of an employee is an amount equal to the greater of the following:

(1) The federal taxable wages set in section 3306 of the Code.

(2) Fifty percent (50%) of the average yearly insured wage, rounded to the nearest multiple of one hundred dollars ($100.00). The average yearly insured wage is the average weekly wage on the computation date multiplied by 52.

(b) Wages Included. – The following wages are included in determining whether the amount of wages paid to an individual in a single calendar year exceeds taxable wages:

(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 when all of the following apply:

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 paid contributions on the wages paid to the individual while in the predecessor's employ during the year of acquisition.

c. The account of the predecessor is transferred to the successor.

"§ 96-9.4. Determination of employer's reserve ratio.

(a) Account Balance. – The Division must determine the balance of an employer's account on the computation date by subtracting the total amount of all benefits charged to the employer's account for all past periods from the total of all contributions and other amounts credited to the employer for those periods. If the Division finds that an employer failed to file a report or finds that a report filed by an employer is incorrect or insufficient, the Division must determine the employer's account balance based upon the best information available to it and must notify the employer that it will use this balance to determine the employer's reserve ratio unless the employer provides additional information within 15 days of the date of the notice.

(b) Reserve Ratio. – The Division must determine an employer's reserve ratio, which is used to determine the employer's contribution rate. The employer's reserve ratio is the quotient obtained by dividing the employer's account balance on the computation date by the total taxable payroll of the employer for the 36 calendar month period ending June 30 preceding the computation date, expressed as a percentage.

"§ 96-9.5. Performance of services in this State.

A service is performed in this State if it meets one or more of the following descriptions:

(1) The service is localized in this State. Service is localized in this State if it meets one of the following conditions:

a. It is performed entirely within the State.

b. It 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.

(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. There is no base of operations and the place from which the service is directed or controlled is in this State.

c. The service is not performed in any state that has a base of operations or a place from which the service is directed or controlled and the individual who performs the service is a resident of this State.

(3) The service, wherever performed, is within the United States or Canada and both of the following apply:

a. The service is not covered under the employment security 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. For purposes of this subdivision, the term "American employer" has the same meaning as defined in section 3306 of the Code.

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 one of the following:

1. An individual who is a resident of this State.

2. A corporation that is organized under the laws of this State.

3. A partnership or a trust and more of its partners or trustees are residents of this State than of any other state.

4. A limited liability company and more of its members are residents of this State than of any other state.

c. The employer has elected coverage in this State in accordance with G.S. 96-9.9.

d. The employer has not elected coverage in any state and the employee has filed a claim for benefits under the law of this State based on the service provided to the employer.

"§ 96-9.6. Election to reimburse Unemployment Insurance Fund in lieu of contributions.

(a) Applicability. – This section applies to a governmental entity, a nonprofit organization, and an Indian tribe that is required by section 3309 of the Code to have a reimbursement option. Each of these employers must finance benefits under the contributions method imposed under G.S. 96-9.2 unless the employer elects to finance benefits by making reimbursable payments to the Division for the Unemployment Insurance Fund.

(b) Election. – An employer may make an election under this section by filing a written notice of its election with the Division at least 30 days before the January 1 effective date of the election. An Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by the tribe. A new employer may make an election under this section by filing a written notice of its election within 30 days after the employer receives notification from the Division that it is eligible to make an election under this section.

An election is valid for a minimum of four years and is binding until the employer files a notice terminating its election. An employer must file a written notice of termination with the Division at least 30 days before the January 1 effective date of the termination. The Division must notify an employer of a determination of the effective date of an election the employer makes and of any termination of the election. These determinations are subject to reconsideration, appeal, and review. An employer that makes the election allowed by this section may not deduct any amount due under this section from the remuneration of the individuals it employs.

(c) Reimbursable Amount. – An employer must reimburse the Unemployment Insurance Fund for the amount of benefits that are paid to an individual for weeks of unemployment that begin within a benefit year established during the effective period of the employer's election and are attributable to service that is covered by section 3309 of the Code and was performed in the employ of the employer. For regular benefits, the reimbursable amount is the amount of regular benefits paid. For extended benefits, the reimbursable amount is the amount not reimbursed by the federal government.

(d) 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 charge to the account benefits that are paid by the Unemployment Insurance

Fund to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election and are attributable to service in the employ of the employer. All benefits paid must be charged to the employer's account except benefits paid through error.

The Division must furnish an employer with a statement of all credits and charges made to its account as of the computation date prior to January 1 of the succeeding year. The Division may, in its sole discretion, provide a reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly if the Division finds it is in the best interest of the Division and the affected employer to do so.

(e) Annual Reconciliation. – A reimbursing employer must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account on the computation date. If there is a deficit in the account, the Division must bill the employer for the amount necessary to bring its account to one percent (1%) of its taxable wages for the preceding calendar year. The Division must send a bill as soon as practical. Payment is due within 30 days from the date a bill is mailed. Amounts unpaid by the due date accrue interest and penalties in the same manner as past-due contributions and are subject to the same collection remedies provided under G.S. 96-10 for past-due contributions.

(f) Quarterly Wage Reports. – A reimbursing employer must submit quarterly wage reports to the Division on or before the last day of the month following the close of the calendar quarter in which the wages are paid. During the first four quarters following an election to be a reimbursing employer, the employer must submit an advance payment with its quarterly report. The amount of the advance payment is equal to one percent (1%) of the taxable wages reported on the quarterly wage report. The Division must remit the payments to the Unemployment Insurance Fund and credit the payments to the employer's account.(g) Change in Election. – The Division must close the account of an employer that has been paying contributions under G.S. 96-9.2 and that elects to change to a reimbursement basis under this section. A closed account may not be used in any future computation of a contribution rate. The Division must close the account of an employer that terminates its election to reimburse the Unemployment Insurance Fund in lieu of making contributions. An employer that terminates its election under this section is subject to the standard beginning rate.

(h) Noncompliance by Indian Tribes. – An Indian tribe that makes an election under this section and then fails to comply with this section is subject to the following consequences:

(1) An employer that fails to pay an amount due within 90 days after receiving a bill and has not paid this liability as of the computation date loses the option to make reimbursable payments in lieu of contributions for the following calendar year. An employer that loses the option to make reimbursable payments in lieu of contributions for a calendar year regains that option for the following calendar year if it pays its outstanding liability and makes all contributions during the year for which the option was lost.

(2) Services performed for an employer that fails to make payments, including interest and penalties, required under this section after all collection activities considered necessary by the Division have been exhausted, are no longer treated as "employment" for the purpose of coverage under this Chapter. An employer that has lost coverage regains coverage under this Chapter for services performed 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.

(i) Transition. – This subsection provides a transitional adjustment period for an employer that elected to be a reimbursing employer prior to January 1, 2013, and was not required to submit an advance payment with its first four quarterly reports equal to one percent (1%) of its reported taxable wages. This subsection expires January 1, 2016.

(1) Governmental entities. – An employer that is a State or local governmental unit must reimburse the Division in the amount required by subsection (c) of this section for benefits paid on its behalf, as determined on the computation date in 2013, but it does not have to reconcile its account balance, as required under subsection (e) of this section, until 2014. If the employer's account balance on the computation date in 2014 does not equal one percent

(1%) of its taxable wages reported for the 2013 calendar year, the Division will bill the employer for the deficiency.

(2) Nonprofit organization. – An employer that is a nonprofit organization may not secure its election to reimburse in lieu of paying contributions by posting a surety bond or a line of credit after July 1, 2013. An employer whose election is secured by a surety bond or line of credit is not required to begin making quarterly advance payments until the quarter following the quarter that its surety bond or line of credit expires and is not required to meet the annual reconciliation requirement until the employer has made at least four quarterly payments.

"§ 96-9.7. Surtax for the Unemployment Insurance Reserve Fund.

(a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected and administered in the same manner as contributions. Surtaxes collected under this section must be credited to the Unemployment Insurance Reserve Fund established under G.S. 96-6. Interest collected on unpaid surtaxes imposed by this section must be credited to the Supplemental Employment Security Administration Fund. Penalties collected on unpaid surtaxes imposed by this section must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1.

(b) Suspension of Tax. – The tax does not apply in a calendar year if, as of the preceding August 1 computation date, the amount in the State's account in the Unemployment Trust Fund equals or exceeds one billion dollars ($1,000,000,000).

"§ 96-9.8. Voluntary election to pay contributions.

(a) When Allowed. – An employer may elect to be subject to the contribution requirement imposed by G.S. 96-9.2 and thereby provide benefit coverage for its employees as follows:

(1) An employer that is not otherwise liable for contributions under G.S. 96-9.2 may elect to pay contributions to the same extent as an employer that is liable for those contributions.

(2) An employer that pays for services that are not otherwise subject to the contribution requirement may elect to pay contributions on those services performed by individuals in its employ in one or more distinct establishments or places of business.

(3) An employer that employs the services of an individual who resides within this State but performs the services entirely without the State may elect to have the individual's service constitute employment subject to contributions if no contributions are required or paid with respect to the services under an employment security law of any other state or of the federal government.

(b) Election. – To make an election under this section, an employer must file an application with the Division. An election is effective on the date stated by the Division in a letter approving the election. An election is irrevocable for the two-year period beginning on the effective date.

(c) Termination. – 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. This termination may occur within the two-year minimum election period. The Division must give the employer 30 days written notice of a decision to terminate an election. The notice must be mailed to the employer's last known address. An employer that elects coverage under this section may, subsequent to the two-year minimum election period, terminate the election by filing a notice of termination with the Division. 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 employer wishes to cease coverage under this section."

SECTION 3.(a) Chapter 96 of the General Statutes is amended by inserting a new Article 2A immediately before G.S. 96-10 to read:

"Article 2A.

Administration and Collection of Contributions."

SECTION 3.(b) Article 2A of Chapter 96 of the General Statutes, as created in subsection (a) of this section, is amended by adding the following new sections to read:

"Article 2A.

"Administration and Collection of Contributions.

"§ 96-9.15. Report and payment.

(a) Report and Payment. – Contributions are payable to the Division when a report is due. A report is 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 Unemployment Insurance Fund. 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.

(b) Overpayment. – If an employer remits an amount in excess of the amount of contributions due, including any applicable penalty and interest, the excess amount remitted is considered an overpayment. The Division must refund an overpayment unless the amount of the overpayment is less than five dollars ($5.00). Overpayments of less than five dollars ($5.00) may be refunded only upon receipt of a written demand for the refund from the employer within the time allowed under G.S. 96-10(e).

(c) Method of Payment. – An employer may 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 allow an employer to pay contributions by credit card. An employer that pays by credit card must include an amount equal to any fee charged by 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.

An employer that does not pay by electronic funds transfer or by credit card must pay by check or cash. A check must be drawn on a United States bank and cash must be in currency of the United States.

(d) Form of Report. – An employer must complete the tax form prescribed by the Division. An employer or an agent of an employer that reports wages for at least 25 employees must file the portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each employee in a format prescribed by the Division. For failure of an employer to comply with this subsection, the Division must assess a penalty of twenty-five dollars ($25.00). For failure of an agent of an employer to comply with this subsection, the Division may deny the agent the right to report wages and file reports for that employer for a period of one year following the calendar quarter in which the agent filed the improper report. The Division may reduce or waive a penalty for good cause shown.

(e) Jeopardy Assessment. – The Secretary may immediately assess and collect a contribution the Secretary finds is due from an employer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment and collection are necessary in order to protect the interest of the State and the Unemployment Insurance Fund.

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

...

"§ 96-10.1. Compromise of liability.

(a) Authority. – The Secretary may compromise an employer's liability under this Article when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

(1) There is a reasonable doubt as to the amount of the liability of the employer under the law and the facts.

(2) The employer is insolvent and the Secretary probably could not otherwise collect an amount equal to, or in excess of, the amount offered in compromise. An employer is considered insolvent only in one of the following circumstances:

a. It is plain and indisputable that the employer is clearly insolvent and will remain so in the reasonable future.

b. The employer has been determined to be insolvent in a judicial proceeding.

(3) Collection of a greater amount than that offered in compromise is improbable, and the funds or a substantial portion of the funds offered in the settlement come from sources from which the Secretary could not otherwise collect.

(b) Written Statement. – When the Secretary compromises an employer's liability under this section and the amount of the liability is at least one thousand dollars ($1,000), the Secretary must make a written statement that sets out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the findings on which the compromise is based. The Secretary must sign the statement and keep a record of the statement."

SECTION 4. Chapter 96 of the General Statutes is amended by inserting a new Article 2B to read:

"Article 2B.

"Administration of Employer Accounts.

"§ 96-11.1. Employer accounts.

The Division must maintain a separate account for each employer. The Division must credit the employer's account with all contributions paid by the employer or on the employer's behalf and must charge the employer's account for benefits as provided in this Chapter. The Division must prepare an annual statement of all charges and credits made to the employer's account during the 12 months preceding the computation date. The Division must send the statement to the employer when the Division notifies the employer of the employer's contribution rate for the succeeding calendar year. The Division may provide a statement of charges and credits more frequently upon a request by the employer.

"§ 96-11.2. Allocation of charges to base period employers.

Benefits paid to an individual are charged to an employer's account when the individual's benefit year has expired. Benefits paid to an individual must be allocated to the account of each base period employer in the proportion that the base period wages paid to the individual in a calendar quarter by each base period employer bears to the total wages paid to the individual in that quarter by all base period employers. The amount allocated to an employer that pays contributions is multiplied by one hundred twenty percent (120%) and charged to that employer's account. The amount allocated to an employer that elects to reimburse the Unemployment Insurance Fund in lieu of paying contributions is the amount of benefits charged to that employer's account.

"§ 96-11.3. Noncharging of benefits.

(a) To Specific Employer. – Benefits paid to an individual under a claim filed for a period occurring after the date of the individual's separation from employment may not be charged to the account of the employer by whom the individual was employed at the time of the separation if the separation is due to one of the reasons listed below and the employer promptly notifies the Division, in accordance with rules adopted by the Division, of the reason:

(1) The individual left work without good cause attributable to the employer.

(2) The employer discharged the individual for misconduct in connection with the work.

(3) The employer discharged the individual solely for a bona fide inability to do the work for which the individual was hired and the individual's period of employment was 100 days or less.

(4) The separation is a disqualifying separation under G.S. 96-14.7.

(b) To Any Base Period Employer. – Benefits paid to an individual may not be charged to the account of an employer of the individual if the benefits paid meet any of the following descriptions:

(1) They were paid to an individual who is attending a vocational school or training program approved by the Division.

(2) They were paid to an individual for unemployment due directly to a major natural disaster declared by the President pursuant to the Disaster Relief Act of 1970, and the individual receiving the benefits would have been eligible for disaster unemployment assistance under this federal act if the individual had not received benefits under this Chapter.

(3) They were paid to an individual who left work for good cause under G.S. 96-14.8.

(4) They were paid as a result of a decision by the Division and the decision is ultimately reversed upon final adjudication.

(c) Current Employer. – At the request of the employer, no benefit charges may be made to the account of an employer that has furnished work to an individual who, because of the loss of employment with one or more other employers, is eligible for partial benefits while still being furnished work by the employer on substantially the same basis and substantially the same wages as had been made available to the individual during the individual's base period. This prohibition applies regardless of whether the employments were simultaneous or successive. A request made under this subsection must be filed in accordance with rules adopted by the Division.

"§ 96-11.4. No relief for errors resulting from noncompliance.

(a) Charges for Errors. – An employer's account may not be relieved of charges relating to benefits paid erroneously from the Unemployment Insurance Fund if the Division determines that both of the following apply:

(1) The erroneous payment was made because the employer, or the agent of the employer, was at fault for failing to respond timely or adequately to a written request from the Division for information relating to the claim for unemployment compensation. An erroneous payment is one that would not have been made but for the failure of the employer or the employer's agent to respond to the Division's request for information related to that claim.

(2) The employer or agent has a pattern of failing to respond timely or adequately to requests from the Division for information relating to claims for unemployment compensation. In determining whether the employer or agent has a pattern of failing to respond timely or adequately, the Division must consider the number of documented instances of that employer's or agent's failures to respond in relation to the total requests made to that employer or agent. An employer or agent may not be determined to have a pattern of failing to respond if the number of failures during the year prior to the request is less than two percent (2%) of the total requests made to that employer or agent.

(b) Appeals. – An employer may appeal a determination by the Division prohibiting the relief of charges under this section in the same manner as other determinations by the Division with respect to the charging of employer accounts.

(c) Applicability. – This section applies to erroneous payments established on or after October 21, 2013.

"§ 96-11.5. Contributions credited to wrong account.

(a) Refund of Contributions Credited to Wrong Account. – When contributions are credited to the wrong account, the erroneous credit may be adjusted only by refunding the employer who made the payment that was credited in error. This applies regardless of whether the employer to whom the payment was credited in error is a related entity of the employer to whom the payment should have been credited. An employer whose payment is credited to the wrong account may request a refund of the amount erroneously credited by filing a request for refund within five years of the last day of the calendar year in which the erroneous credit occurred.

(b) Effect on Contribution Rate. – Failure of the Division to credit the correct account for contributions does not affect the contribution rate determined under G.S. 96-9.2 for either the employer whose account should have been credited for the contributions or the employer whose account was credited, and it does not affect the liability of an employer for contributions determined under those rates. No prior contribution rate for either of the employers may be adjusted even though the contribution rates were based on incorrect amounts in their account. An employer is liable for contributions determined under those rates for the five calendar years preceding the year in which the error is determined. This applies regardless of whether the employer acted in good faith.

"§ 96-11.6. Interest on Unemployment Insurance Fund allocated among employers' accounts.

The Division must determine the ratio of the credit balance in each employer's account to the total of the credit balances in all employers' accounts as of the computation date. The

Division must allocate an amount equal to the interest credited to this State's account in the Unemployment Trust Fund for the four completed calendar quarters preceding the computation date on a pro rata basis to these accounts. The amount must be prorated to an employer's account in the same ratio that the credit balance in the employer's account bears to the total of the credit balances in all the accounts. Voluntary contributions made by an employer after July 31 of a year are not considered a part of the employer's account balance used in determining the allocation under this section until the computation date in the following year.

"§ 96-11.7. Acquisition of employer and transfer of account to another employer.

(a) Mandatory Transfer. – When an employer acquires all of the organization, trade, or business of another employer, the account of the predecessor must be transferred as of the date of the acquisition to the successor employer for use in the determination of the successor's contribution rate. This mandatory transfer does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy. In this circumstance, the successor's contribution rate is determined without regard to the predecessor's contribution rate.

(b) Consent. – When a distinct and severable portion of an employer's organization, trade, or business is transferred to a successor employer and the successor employer continues to operate the acquired organization, trade, or business, the portion of the account of the transferring employer that related to the transferred business may, with the approval of the Division, be transferred by mutual consent from the transferring employer to the successor employer. A successor employer that is a related entity of the transferring employer is eligible for a transfer from the transferring employer's account only to the extent permitted by rules adopted by the Division. No transfer may be made to the account of an employer that has ceased to be an employer under G.S. 96-11.9.

If a transfer of part or all of an account is allowed but is not mandatory, the successor employer requesting the transfer may make a request for transfer by filing an application for transfer with the Division within two years after the date the business was transferred or the date of notification by the Division of the right to request an account transfer, whichever is later. If the application is approved and the application was filed within 60 days after notification from the Division of the right to request a transfer, the transfer is effective as of the date the business was transferred. If the application is approved and the application was filed later than 60 days after notification from the Division, the effective date of the transfer is the first day of the calendar quarter in which the application was filed.

If the effective date of a transfer of an account under this subsection is after the computation date in a calendar year, the Division must recalculate the contribution rate for the transferring employer and the successor employer based on their account balances on the effective date of the account transfer. The recalculated contribution rate applies for the calendar year beginning after the computation date.

(c) Employer Number. – A new employer shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employer shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. The following assumptions apply in this subsection:

(1) "Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(2) A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control includes changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership,

corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

(d) Contribution Rate. – Notwithstanding the other provisions in this section, when an account is transferred in its entirety to a successor employer, the transferring employer's contribution rate is the standard beginning rate.

Notwithstanding the other provisions in this section, if a successor employer to whom an account is transferred was an employer as of the date of the business transfer, the account transfer does not affect the successor employer's contribution rate for the calendar year in which the business was transferred. If the successor employer was not an employer as of the date of the business transfer, the successor employer's contribution rate for the year in which the business transfer occurs is the standard beginning rate unless one of the following applies:

(1) The account transfer is a mandatory transfer, in which case the contribution rate of the successor employer is the contribution rate of the transferring employer.

(2) The account transfer is by consent and the successor employer filed an application within 60 days of the business transfer, in which case the contribution rate of the successor employer is the contribution rate of the transferring employer. If the business was transferred from more than one employer and the transferring employers had different contribution rates, the contribution rate of the successor employer is the rate calculated as of the effective date of the account transfers.

(e) Liability for Contributions. – An employer that, by operation of law, purchase, or otherwise is the successor to an employer liable for contributions becomes 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.

(f) Deceased or Insolvent Employer. – When the organization, trade, or business of a deceased person or of an insolvent debtor is taken over and operated by an administrator, executor, receiver, or trustee in bankruptcy, the new employer automatically succeeds to the account and contribution rate of the deceased person or insolvent debtor without the necessity of filing an application for the transfer of the account.

"§ 96-11.8. Closure of account.

(a) Account Closed. – When an employer ceases to be an employer under G.S. 96-11.9, the employer's account must be closed and may not be used in any future computation of the employer's contribution rate. An employer has no right or claim to any amounts paid by the employer into the Unemployment Insurance Fund.

(b) Exception for Active Duty. – If the Division finds that an employer's business is closed solely because one or more of its owners, officers, or partners or its majority stockholder enters into the Armed Forces of the United States, an ally, or the United Nations, the employer's account may not be terminated. If the business resumes within two years after the discharge or release of the affected individual from active duty in the Armed Forces of the United States, the employer's account is considered 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 an employer that makes contributions under G.S. 96-9.2. This subsection does not apply to an employer that makes payments in lieu of contributions under G.S. 96-9.6.

"§ 96-11.9. Termination of coverage.

(a) By Law. – An employer that has not paid wages for two consecutive calendar years ceases to be an employer liable for contributions under this Chapter.

(b) By Application. – An employer may file an application with the Division to terminate coverage. An application for termination must be filed prior to March 1 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 is effective as of January 1 of the calendar year in which the application is granted.

(c) After Reactivation. – If the Division reactivates the account of an employer that has been closed, the employer may file an application with the Division to terminate coverage. The application must be filed within 120 days after the Division notifies the employer 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 is effective as of January 1 of the calendar year in which the application is granted. An employer's protest of liability upon reactivation is considered an application for termination.

(d) After Discovery. – When the Division discovers that an employer is liable for contributions for a period of more than two years, the employer may file an application with the Division to terminate coverage. The application must be filed within 90 days after the Division notifies the employer of the discovered liability. The Division may terminate coverage if it finds that the employer was not liable for contributions during the preceding calendar year. An employer's protest of liability upon discovery is considered an application for termination. An employer is not eligible for termination of liability under this subsection if the employer willfully attempted to defeat or evade the payment of contributions."

SECTION 5. Article 9 of Chapter 96 of the General Statutes is amended by adding a new Article to read:

"Article 2C.

"Benefits Payable for Unemployment Compensation.

"§ 96-14.1. Unemployment benefits.

(a) Purpose. – The purpose of this Article is to provide temporary unemployment benefits as required by federal law to an individual who is unemployed through no fault on the part of the individual and who is able, available, and actively seeking work.

(b) Valid Claim. – To obtain benefits, an individual must file a valid claim for unemployment benefits and register for work. An individual must serve a one-week waiting period for each claim filed. A valid claim is one that meets the employment and wage standards in this subsection for the individual's base period. A valid claim for a second benefit year is one that meets the employment and wage standards in this subsection since the beginning date of the prior benefit year and before the date the new benefit claim is filed.

(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, then the wage standard for that individual is determined using the last four completed calendar quarters immediately preceding the first day of the individual's benefit year. This alternative base period may not be used by an individual in making a claim for benefits in the next benefit year.

(c) Qualification Determination. – An individual's qualification for benefits is determined based on the reason for separation from employment from the individual's bona fide employer. The individual's bona fide employer is the most recent employer for whom the individual began employment for an indefinite duration or a duration of more than 30 consecutive calendar days, regardless of whether work was performed on all of those days. An individual who is disqualified has no right to benefits.

(d) Eligibility for Benefits. – The Division must calculate a weekly benefit amount and determine the duration of benefits for an individual who files a valid claim and qualifies for benefits. To receive the weekly benefit amount, the Division must find that the individual meets the work search eligibility requirements for each week of the benefit period. An individual who fails to meet the work search requirements for a given week is ineligible to receive a benefit until the condition causing the ineligibility ceases to exist.

(e) Federal Restrictions. – Benefits are not payable for services performed by the following individuals, to the extent prohibited by section 3304 of the Code:

(1) Instructional, research, or principal administrative employees of educational institutions.

(2) Professional athletes.

(3) Aliens.

"§ 96-14.2. Weekly benefit amount.

(a) 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).

(b) Partial Weekly Benefit Amount. – The weekly benefit amount for an individual who is partially unemployed or part-totally employed is the amount the individual would receive under subsection (a) of this section if the individual were totally unemployed, reduced by the amount of any wages the individual receives in the benefit week in excess of twenty percent (20%) of the benefit amount applicable to total unemployment. 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.

(c) Retirement Reduction. – The amount of benefits payable to an individual must be reduced as provided in section 3304(a)(15) of the Code.

(d) Income Tax Withholding. – An individual may elect to have federal income tax deducted and withheld from the individual's unemployment benefits in the amount specified in section 3402 of the Code. An individual may elect to have State income tax deducted and withheld from the individual's unemployment benefits in an amount determined by the individual. The individual may change a previously elected withholding status. The amounts deducted and withheld from unemployment benefits remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. The Division must advise an individual in writing at the time the individual files a claim for unemployment benefits that the benefits paid are subject to federal and State income tax, that requirements exist pertaining to estimated tax payments, and that the individual may elect to have the amounts withheld.

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

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

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

"§ 96-14.4. Duration of benefits for individual claimant.

(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) Multiply the 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. 96-14.2.

(b) Duration. – The number of weeks an individual may receive benefits varies depending on the seasonal adjusted statewide unemployment rate that applies 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 in accordance with G.S. 96-14.3. 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 in accordance with G.S. 96-14.3.

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

"§ 96-14.5. Disqualification for good cause not attributable to the employer.

(a) Determination. – The Division must determine the reason for an individual's separation from work. An individual does not have a right to benefits and is disqualified from receiving benefits if the Division determines that the individual left work for a reason other than good cause attributable to the employer. When an individual leaves work, the burden of showing good cause attributable to the employer rests on the individual and the burden may not be shifted to the employer.

(b) Reduced Work Hours. – When 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, the leaving is presumed to be good cause attributable to the employer. The employer may rebut the presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or nonfeasance on the part of the individual.

(c) Reduced Rate of Pay. – When 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%), the leaving is presumed to be good cause attributable to the employer. The employer may rebut the presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or nonfeasance on the part of the individual.

"§ 96-14.6. Disqualification for misconduct.

(a) Disqualification. – An individual who the Division determines is unemployed for misconduct connected with the work is disqualified for benefits. The period of disqualification begins with the first day of the first week the individual files a claim for benefits after the misconduct occurs.

(b) Misconduct. – Misconduct connected with the work is either of the following:

(1) Conduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee.

(2) 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.

(c) Examples. – The following examples are prima facie evidence of misconduct that may be rebutted by the individual making a claim for benefits:

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

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

(3) Consumption of alcohol or illegal drugs on the employer's premises.

(4) Conviction by a court of competent jurisdiction for manufacturing, selling, or distributing 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 the employer or is in violation of a reasonable work rule or policy.

(5) Termination or suspension 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 the employee's work for an employer or is in violation of a reasonable work rule or policy.

(6) Any physical violence whatsoever related to the 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 toward supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic that 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) Violation of an employer's written absenteeism policy.

(11) Refusal to perform reasonably assigned work tasks or failure to adequately perform employment duties as evidenced by no fewer than three written reprimands in the 12 months immediately preceding the employee's termination.

"§ 96-14.7. Other reasons to be disqualified from receiving benefits.

(a) Failure to Supply Necessary License. – An individual is disqualified for benefits if the Division determines that the individual is unemployed for failure to possess a license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment if it was the individual's responsibility to supply the necessary documents and the individual's inability to do so was within the individual's control. The period of disqualification begins with the first day of the first week the individual files a claim for benefits after the individual's failure occurs.

(b) Labor Dispute. – An individual is disqualified for benefits if the Division determines the individual's total or partial unemployment is caused by a labor dispute in active progress at the factory, establishment, or other premises at which the individual is or was last employed or by a labor dispute at another place within this State that is owned or operated by the employer that owns or operates the factory, establishment, or other premises at which the individual is or was last employed and that supplies materials or services necessary to the continued and usual operation of the premises at which the individual is or was last employed. An individual disqualified under the provisions of this subsection continues to be disqualified after the labor dispute has ceased to be in active progress for the period of time that is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment.

"§ 96-14.8. Military spouse relocation and domestic violence are good causes for leaving.

An individual is not disqualified for benefits for leaving work for one of the reasons listed in this section. Benefits paid on the basis of this section are not chargeable to the employer's account.(1) Military spouse relocation. – Leaving work to accompany the individual's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another.

(2) Domestic violence. – Leaving work for reasons of domestic violence if the individual reasonably believes that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family. For purposes of this subdivision, an individual is a victim of domestic violence if one or more of the following applies:

a. The individual has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes.

b. 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:

1. Law enforcement, court, or federal agency records or files.

2. Documentation from a domestic violence or sexual assault program if the individual is alleged to be a victim of domestic violence or sexual assault.

3. Documentation from a religious, medical, or other professional from whom the individual has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking.

c. The individual has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the individual or upon a minor child with or in the custody of the individual by another individual who has or has had a familial relationship with the individual or minor child.

"§ 96-14.9. Weekly certification.

(a) Requirements. – An individual's eligibility for a weekly benefit amount is determined on a week-to-week basis. An individual must meet all of the requirements of this section for each weekly benefit period. An individual who fails to meet one or more of the

requirements is ineligible to receive benefits until the condition causing the ineligibility ceases to exist.

(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. – The Division must find that the individual meets all of 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) Able to Work. – An individual is not able to work during any week that 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.

(d) Available to Work. – An individual is not available to work during any week that one or more of the following applies:

(1) The individual tests positive for a controlled substance. An individual tests positive for a controlled substance if all of the conditions of this subdivision apply. An employer must report an individual's positive test for a controlled substance to the Division.
    a. The test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes.
    b. The test is required as a condition of hire for a job.
    c. The job would be suitable work for the individual.
(2) The individual is incarcerated or has received notice to report to or is otherwise detained in a state or federal jail or penal institution. This subdivision does not apply to an individual who is incarcerated solely on a weekend in a county jail and who is otherwise available for work.
(3) The individual is an alien and is not in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and Naturalization Service.
(4) The individual is on disciplinary suspension for more than 30 days based on acts or omissions that constitute fault on the part of the employee and are connected with the work.

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

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

(f) 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 10 weeks of a benefit period, the Division may consider all of the following:
    a. The degree of risk involved to the individual's health, safety, and morals.
    b. The individual's physical fitness and prior training and experience.
    c. The individual's prospects for securing local work in the individual's customary occupation.
    d. The distance of the available work from the individual's residence.
    e. The individual's prior earnings.

(2) During the remaining weeks of a benefit period, the Division must consider any employment offer paying one hundred twenty percent (120%) of the individual's weekly benefit amount to be suitable work.

(g) Job Attachment. – An individual who is partially unemployed and for whom the employer has filed an attached claim for benefits has satisfied the work search requirements for any given week in the benefit period associated with the attached claim if the Division determines the individual is available for work with the employer that filed the attached claim.

(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 individual 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 an individual to reemployment services if the Division finds that the individual would likely exhaust regular benefits and need reemployment services to make a successful transition to new employment.

(3) Vocational school or training program. – The individual is attending a vocational school or training program approved by the Division.

(i) Federal Labor Standards. – An otherwise eligible individual may not be denied benefits for a given week if the Division determines the individual refused to accept new work for one or more of the following reasons:

(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.

(j) 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 of 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.

"§ 96-14.10. Disciplinary suspension.

The disciplinary suspension of an employee for 30 or fewer consecutive calendar days does not constitute good cause for leaving work. An individual who is on suspension is not available for work and is not eligible for benefits for any week during any part of the disciplinary suspension. If the disciplinary suspension exceeds 30 days, the individual is considered to have been discharged from work because of the acts or omissions that caused the suspension and the issue is whether the discharge was for disqualifying reasons. During the period of suspension up to 30 days, the individual is considered to be attached to the employer's payroll, and the issue of separation from work is held in abeyance until a claim is filed for a week to which this section does not apply.

"§ 96-14.11. Disqualification for the remaining weeks of the benefit period.

(a) Duration. – An individual may be disqualified from receiving benefits for the remaining weeks of the claim's duration if one or more subsections of this section apply. The period of disqualification under this section begins with the first day of the first week after the disqualifying act occurs.

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

(1) Apply for available suitable work when so directed by the employment office of the Division.
(2) Accept suitable work when offered.
(3) Return to the individual's customary self-employment when so directed by the Division.

(c) Recall After Layoff. – An individual is disqualified for any remaining 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 an employer under one or more of the following circumstances:

(1) The individual was recalled within four weeks after a layoff. As used in this subdivision, 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 employer's payroll and is a continuing employee subject to recall by the employer.
(2) The individual was recalled in a week in which the work search requirements were satisfied under G.S. 96-14.7(g) due to job attachment.

"§ 96-14.12. Limitations on company officers and spouses.

(a) Disqualification for Benefits. – 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 or the individual's spouse is unemployed because the individual's ownership share of the employer was voluntarily sold and, at the time of the sale, one or more of the following applied:
  a. The employer 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 employer was a partnership, limited or general, and the individual was a limited or general partner.
  c. The employer was a limited liability company and the individual was a member.
  d. The employer was a proprietorship, and the individual was the proprietor.

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

"§ 96-14.13. Limitation on benefits due to lump sum payments.

An individual is disqualified from receiving benefits for any week for which the individual receives any sum from the employer pursuant to an order of a court, the National Labor Relations Board, or another adjudicative agency or by private agreement, consent, or arbitration for loss of pay by reason of discharge. When the employer pays a lump sum that covers a period of more than one week, the amount paid is allocated to the weeks in the period on a pro rata basis as determined by the Division. If the amount prorated to a week would, if it had been earned by the individual during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-14.2, the individual is entitled to receive the reduced payment if the individual is otherwise eligible for benefits.

Benefits paid for weeks of unemployment for which back pay awards or other similar compensation are made constitutes an overpayment of benefits. The employer must deduct the overpayment from the award prior to payment to the employee and must send the overpayment to the Division within five days of the payment for application against the overpayment. Overpayments not remitted to the Division are subject to the same collection procedures as contributions. The removal of charges made against the employer's account as a result of the previously paid benefits applies to the calendar year in which the Division receives the overpayment."

SECTION 6. G.S. 96-12.01 is recodified as G.S. 96-14.14 and G.S. 96-14.14(a), as recodified by this section, reads as rewritten:

"(a) Extended benefits payable under sub-subdivision (a1)(4)a. of this section shall be paid as required under the Federal-State Extended Unemployment Compensation Act of 1970. Extended benefits payable under sub-subdivision (a1)(4)a. of this section are not required under federal law and may be paid only if the federal government funds one hundred percent (100%) of the costs of providing them. Extended benefits are payable in the manner prescribed by this section."

SECTION 7.(a) Chapter 96 of the General Statutes is amended by inserting a new Article 2D immediately before G.S. 96-15:

"Article 2D.
Administration of Benefits."

SECTION 7.(b) Article 2D of Chapter 96 of the General Statutes, as created in subsection (a) of this section, reads as rewritten:

"Article 2D.
"Administration of Benefits.

"§ 96-15. Claims for benefits.

(a) Generally. – Claims for benefits must be made in accordance with rules adopted by the Division. An employer must provide individuals providing services for it access to information concerning the unemployment compensation program. The Division must supply an employer with any printed statements and other materials that the Division requires an employer to provide to individuals without cost to the employer.

(a1) Attached Claims. – An employer may file claims for employees through the use of automation in the case of partial unemployment. An employer may file an attached claim for an employee only once during a calendar year, and the period of partial unemployment for which the claim is filed may not exceed six weeks. To file an attached claim, an employer must pay the Division an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. The Division must credit the amounts paid to the Unemployment Insurance Fund.

An employer may file an attached claim under this subsection only if the employer has a positive credit balance in its account as determined under Article 2B of this Chapter. If an employer does not have a positive credit balance in its account, the employer must remit to the Division 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) ...

(2) 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, or whether any disqualification should be imposed, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed 10 days from the delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant, or whether any disqualification should be imposed, after 45 days from the first day of the first week after the question or issue occurs with respect to

which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

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

...

"§ 96-15.01. Establishing a benefit year.

(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. 96-14.2.

(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. 96-14.2.

(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. 96-14.2.

(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. If the remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it had been earned by the individual during a week of employment. 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.

(d) Substitute School Personnel. – An individual that performs service in a school as a substitute is not unemployed for days or weeks when the individual is not called to work unless the individual was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For purposes of this subsection, a full-time substitute is an employee that works for more than 30 hours a week for the school on a continual basis for a period of six months or more.

...

"§ 96-18.1. Attachment and garnishment of fraudulent overpayment.

(a) Applicability. – This section applies to an individual who has been provided notice of a determination or an appeals decision finding that the individual, or another individual acting in the individual's behalf and with the individual's knowledge, has knowingly done one or more of the following to obtain or increase a benefit or other payment under this Chapter:

(1) Made a false statement or misrepresentation.

(2) Failed to disclose a material fact.

(b) Attachment and Garnishment. – Intangible property that belongs to an individual, is owed to an individual, or has been transferred by an individual under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a fraudulent overpayment that is due from the individual and is collectible under this Article. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery.

A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the individual owes. The liability applies only to the amount of the individual's property in the garnishee's possession, reduced by any amount the individual owes the garnishee.

The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information that identifies an individual who owes a fraudulent overpayment that is collectible under this section and the amount of the overpayment. The Secretary may submit the information on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the individual and must inform the Secretary of its determination. The Secretary must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution under G.S. 110-139 for providing information for use in locating a noncustodial parent.

No more than ten percent (10%) of an individual's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment.(c) Notice. – Before the Secretary attaches and garnishes intangible property in payment of a fraudulent overpayment, the Secretary must send the garnishee a notice of garnishment. The notice must be sent either in person, by certified mail with a return receipt requested, or with the agreement of the garnishee, by electronic means. The notice must contain all of the following information:

(1) The individual's name.

(2) The individual's social security number or federal identification number.

(3) The amount of fraudulent overpaid benefits the individual owes.

(4) An explanation of the liability of a garnishee for fraudulent overpayment of unemployment insurance benefits owed by an overpaid individual.

(5) An explanation of the garnishee's responsibility concerning the notice.

(d) Action. – A garnishee must comply with a notice of garnishment or file a written response to the notice within the time set in this subsection. A garnishee that is a financial institution must comply or file a response within 20 days after receiving a notice of garnishment. All other garnishees must comply or file a response within 30 days after receiving a notice of garnishment. A written response must explain why the garnishee is not subject to garnishment and attachment.

Upon receipt of a written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the fraudulent overpayment of unemployment benefits by civil action."

SECTION 8. G.S. 96-24 reads as rewritten:

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

(a) Agreement. – The Department of Commerce is authorized to enter into agreement with the governing authorities of any municipality, county, township, or school corporation in the State for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and for the extension of vocational guidance in cooperation with the United States Employment Service, and under and by virtue of any such agreement as aforesaid to pay, from any funds appropriated by the State for the purposes of this

Article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of offices and other expenses.

(b) Location. – The Department of Commerce must take into consideration all of the following factors when determining the appropriate number and location of local offices:

(1) Location of the 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.
(6) Any other factors the Division considers necessary in determining the appropriate number and location of local offices."

SECTION 9.(a) G.S. 58-89A-120 reads as rewritten:

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

A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and collection of unemployment insurance contributions or the assignment of discrete employer numbers under the Employment Security Law. The Department of Commerce, Division of Employment Security (DES), shall cooperate with the Commissioner in the investigation of applicants and licensees and shall provide the Commissioner with access to all relevant records and data in the custody of the DES."

SECTION 9.(b) G.S. 96-4 reads as rewritten:

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

...

(b) Board of Review. – The Governor shall appoint a three-person Board of Review to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Division. The Board of Review shall be comprised of one member representing employers, one member representing employees, and one member representing the general public. Members of the Board of Review are subject to confirmation by the General Assembly and shall serve four-year terms. The member appointed to represent the general public shall serve as chair of the Board of Review and shall be a licensed attorney. The annual salaries of the Board of Review shall be set by the General Assembly in the current Operations Appropriations Act. The Board of Review shall exercise its decision-making processes independent of the Governor, the General Assembly, the Department, and the Division.

...

(i) Records and Reports. –

(1) Each employer shall keep true and accurate employment records, containing such information as the Division may prescribe. The records shall be open to inspection and be subject to being copied by the Division or its authorized representatives at any reasonable time and as often as may be necessary. An employer doing business in North Carolina shall make available in this State to the Division, such information with respect to persons performing services for it which the Secretary deems necessary in connection with the administration of this Chapter. The Division may require from an employer any sworn or unsworn reports, with respect to persons employed by it, which the Secretary deems necessary for the effective administration of this Chapter, including the employer's quarterly tax and wage report containing the name, social security number, and gross wages of persons employed during that quarter.

(2) If the Division finds that any employer has failed to file any report or return required by this Chapter or any regulation made pursuant hereto, or has filed a report which the Division finds incorrect or insufficient, the Division may make an estimate of the information required from such employer on the basis of the best evidence reasonably available to it at the time, and make, upon the basis of such estimate, a report or return on behalf of such employer, and the report or return so made shall be deemed to be prima facie correct, and the Division may make an assessment based upon such report and proceed to collect contributions due thereon in the manner as set forth in G.S. 96-10(b) of this Chapter: Provided, however, that no such report or return shall be made until the employer has first been given at least 10 days'

notice by registered mail to the last known address of such employer: Provided further, that no such report or return shall be used as a basis in determining whether a person is an employer within the meaning of this Chapter.

...

(p) Reciprocal Arrangements. –

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

a. Services performed by an individual for an employer for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states

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

...

(2) Reimbursements paid from the fund pursuant to subparagraphs b and c of subdivision (1) of this subsection shall be deemed to be benefits. The Division is authorized to make to other states or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision (1) of this subsection.

...

(q) The Division after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of an employer. The Board of Review shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of an employer including the right to determine the amount of contributions, if any, which may be due the Division by any employer. Hearings may be before the Board of Review and shall be held in the central office of the Board of Review or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Board of Review and a determination of the law applicable to that evidence. The Board of Review shall provide for the taking of evidence by a hearing officer employed in the capacity of an attorney by the Department. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the Board of Review and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Board for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employer resides, maintains a place of business, or conducts business; however, the Board of Review may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed to appeal, the party shall within 10 days after notice of such decision or determination, file with the Board of Review exceptions to the decision or the determination, which exceptions will state the grounds of objection to the decision or determination. If any one of the exceptions shall be overruled then the party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the Board of Review upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10

days after the notice of appeal has been served, file with the Board of Review exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the Board of Review shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or, unless the appellant objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties.

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

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

...

(u) Notices of hearing shall be issued by the Division or its authorized representative and sent by registered mail, return receipt requested, to the last known address of employer, employers, persons, or firms involved. The notice shall be sent at least 15 days prior to the hearing date and shall contain notification of the place, date, hour, and purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the Division or its

authorized representative and shall order the witness to appear at the time, date and place shown thereon. Any bond or other undertaking required to be given in order to suspend or stay any execution shall be given payable to the Department of Commerce. Any such bond or other undertaking may be forfeited or sued upon as are any other undertakings payable to the State.

...

(x) Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government. – Disclosure and redisclosure of confidential information shall be consistent with 20 C.F.R. Part 603 and any written guidance promulgated and issued by the U.S. Department of Labor consistent with this regulation and any successor regulation. To the extent a disclosure or redisclosure of confidential information is permitted or required by this federal regulation, the Department's authority to disclose or redisclose the information includes the following:

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

(2) Job Service Information. – (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the Division have agreed upon in writing. (ii) The Division shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (iii) The Labor Market Information Unit shall collect, collate, and publish statistical and other information relating to the work under the Division's jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the Division's opinion may make further legislation desirable. (iv) Except as provided by rules adopted by the Division, any information published

pursuant to this subdivision shall not be published in any manner revealing the identity of the applicant or the employer.

...

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

...."

SECTION 9.(c) G.S. 96-16 reads as rewritten:

"**§ 96-16. Seasonal pursuits.**

(a) 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 any successor under G.S. 96-11.6 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.

...

(f) ...

(3) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on seasonal wages shall be an amount, adjusted to the nearest multiple of one dollar ($1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in G.S. 96-14.4, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.

(4) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar ($1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in G.S. 96-14.4, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.

(5) In no case shall a seasonal worker be eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in G.S. 96-14.4.

(g) (1) All benefits paid to a seasonal worker based on seasonal wages shall be charged 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 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.

...."

SECTION 9.(d) G.S. 96-18(g) reads as rewritten:

"(g) ...

(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:

...

c. Any person who has been found by the Division to have been overpaid under subparagraph (2) above due to fraudulent nondisclosure or misrepresentation shall be liable to have the sums deducted from future benefits payable to the person under this Chapter. The amount deducted may be up to one hundred percent (100%) of that person's weekly benefit amount.

d. Any person who has been found by the Division to have been overpaid under subparagraph (2) above due to nonfraudulent reasons shall be liable to have the sums deducted from future benefits

payable to the person under this Chapter but the amount deducted for any week shall be reduced by no more than fifty percent (50%) of that person's weekly benefit amount.

...."

SECTION 9.(e) G.S. 97-29(i) reads as rewritten:

"**§ 97-29. Rates and duration of compensation for total incapacity.**

(i) Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage, as defined in G.S. 96-1, by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars ($2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided."

SECTION 10. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 12R.

"Joint Legislative Oversight Committee on Unemployment Insurance.

"**§ 120-70.155. Creation and membership.**

(a) The Joint Legislative Oversight Committee on Unemployment Insurance is established. The Committee consists of eight members appointed as follows:

(1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

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

(b) The members serve for a term of two years. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment.

"**§ 120-70.156. Purpose and powers of Committee.**

(a) Purpose. – The Joint Legislative Oversight Committee on Unemployment Insurance is directed to study and review all unemployment insurance matters, workforce development programs, and reemployment assistance efforts of the State. The following duties and powers, which are enumerated by way of illustration, shall be liberally construed to provide maximum review by the Committee of these matters:

(1) Study the unemployment insurance laws of North Carolina and the administration of those laws.

(2) Review the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer.

(3) Monitor the payment of the debt owed by the Unemployment Trust Fund to the federal government.

(4) Review and determine the adequacy of the balances in the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund.

(5) Study the workforce development programs and reemployment assistance efforts of the Division of Workforce Solutions of the Department of Commerce.

(6) Call upon the Department of Commerce to cooperate with it in the study of the unemployment insurance laws and the workforce development efforts of the State.

(b) The Committee may report its findings and recommendations to any regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

"**§ 120-70.157. Organization of Committee.**

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. The Joint

Legislative Oversight Committee on Unemployment Insurance may meet upon the joint call of the cochairs. A quorum of the Committee is five members.

The Committee may meet in the Legislative Building or the Legislative Office Building. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"**§ 120-70.158. Sunset.**

This Article expires July 1, 2023."

SECTION 11. This act becomes effective July 1, 2013. Changes made by this act to unemployment benefits apply to claims for benefits filed on or after July 1, 2013. Changes made by this act to require an account balance by an employer that is a governmental entity or a nonprofit organization and that elects to finance benefits by making reimbursable payments in lieu of contributions apply to advance payments payable for calendar quarters beginning on or after July 1, 2013. Changes made by this act to the determination and application of the contribution rate apply to contributions payable for calendar quarters beginning on or after January 1, 2014.

In the General Assembly read three times and ratified this the 14th day of February, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:31 a.m. this 19th day of February, 2013