

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE DRS55205-LR-46E\* (02/18)**

Short Title: ESC/Jobs Reform.

(Public)

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Sponsors: Senators Clary and Rucho (Primary Sponsors).

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Referred to:

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A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

**PART I. TRANSFER; GENERAL PROVISIONS; RULE MAKING**

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

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

**SECTION 1.3.** No action or proceeding pending on January 1, 2012, brought by or against the Employment Security Commission shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Department of Commerce, Division of Employment Security. In these actions and proceedings, the Secretary of Commerce or the Department of Commerce shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the Employment Safety and Security Commission,



1 or by the commissioners or directors thereof, pertaining to or connected with the functions,  
2 powers, obligations, and duties set forth herein, which is pending on the date this act becomes  
3 effective, may be conducted and completed by the Employment Safety and Security  
4 Commission in the same manner and under the same terms and conditions and with the same  
5 effect as if conducted and completed by the original program, office, or commissioners, or  
6 directors thereof.

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

8 **"§ 143B-431. Department of Commerce – functions.**

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

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

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

- 21 a. The State Board of Alcoholic Control,
  - 22 b. The North Carolina Utilities Commission,
  - 23 ~~c. The Employment Security Commission,~~
  - 24 d. The North Carolina Industrial Commission,
  - 25 e. State Banking Commission and the Commissioner of Banks,
  - 26 f. Savings Institutions Division,
  - 27 g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
  - 28 h. Credit Union Commission,
  - 29 i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17,  
30 2004.
  - 31 j. The North Carolina Mutual Burial Association Commission,
  - 32 k. The North Carolina Rural Electrification Authority,
  - 33 l. The North Carolina State Ports Authority,
- 34 all of which enumerated agencies are hereby expressly transferred by a Type  
35 II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted  
36 Department of Commerce; and  
37 ...."

38 **SECTION 1.5.** G.S. 143B-433(1) reads as rewritten:

39 **"§ 143B-433. Department of Commerce – organization.**

40 The Department of Commerce shall be organized to include:

41 (1) The following agencies:

- 42 a. The North Carolina Alcoholic Beverage Control Commission.
- 43 b. The North Carolina Utilities Commission.
- 44 ~~c. The Employment Security Commission.~~
- 45 d. The North Carolina Industrial Commission.
- 46 e. State Banking Commission.
- 47 f. Savings Institutions Division.
- 48 g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
- 49 h. Credit Union Commission.
- 50 i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17,  
51 2004.

- 1 j. The North Carolina Mutual Burial Association Commission.  
 2 k. North Carolina Cemetery Commission.  
 3 l. The North Carolina Rural Electrification Authority.  
 4 m. Repealed by Session Laws 1985, c. 757, s. 179(d).  
 5 n. North Carolina Science and Technology Research Center.  
 6 o. The North Carolina State Ports Authority.  
 7 p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2,  
 8 2010.  
 9 q. Economic Development Board.  
 10 r. Labor Force Development Council.  
 11 s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective  
 12 September 30, 2000.  
 13 u. Navigation and Pilotage Commissions established by Chapter 76 of  
 14 the General Statutes.  
 15 v. Repealed by Session Laws 1993, c. 321, s. 313b.

- (2) Those agencies which are transferred to the Department of Commerce including the:  
 a. Community Assistance Division.  
 b. Community Development Council.  
 c. Employment and Training Division.  
 d. Job Training Coordinating Council.

(3) The Division of Employment Security.

~~(3)~~(4) Such divisions as may be established pursuant to Article 1 of this Chapter."

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

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

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

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

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

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

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

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

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

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

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

9 (1) The ~~Chairman~~ Assistant Secretary of Commerce in charge of the Division of  
10 Employment Security ~~Commission~~ Security or that officer's designee.

11 (2) The President of the Community Colleges System or that officer's designee.

12 (3) The State Auditor or that officer's designee.

13 (4) A representative of a statewide association to further the interests of business  
14 and industry in North Carolina designated by the Secretary of Commerce.

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

17 (1) Displaced workers participating in the TJS initiative shall receive (i)  
18 on-the-job training to learn new job skills and (ii) educational assistance or  
19 remedial education specifically designed to help displaced workers qualify  
20 for new jobs.

21 (2) Displaced workers participating in the TJS initiative shall not lose their  
22 eligibility for unemployment insurance benefits while they are in the  
23 program and may receive wage supplements, as appropriate.

24 (3) In-State relocation assistance, in appropriate instances, where participating  
25 individuals must relocate to work for participating employers.

26 (4) Mentoring, both on and off the job, shall be provided to participants in a  
27 dignified manner through telephone assistance and other appropriate means.

28 (5) Financial assistance and other incentives may be provided to participating  
29 employers who provide jobs to participating displaced workers to help  
30 defray the costs of providing the on-the-job training opportunities.

31 (6) Work provided by participating employers as part of the TJS initiative must  
32 be full-time employment. Wages paid shall not be less than the hourly  
33 entry-level wage normally paid by the employer.

34 (7) Staff of the Division of the Employment Security ~~Commission~~, Security, in  
35 conjunction with other appropriate staff of the Department of Commerce,  
36 shall match participating displaced workers to the most suitable employer.

37 (8) Local Employment Security ~~Commission~~ offices operated by the Division of  
38 Employment Security and community colleges shall enter into partnership  
39 agreements with local chambers of commerce, and other appropriate  
40 organizations, that would encourage employer participation in the TJS  
41 initiative.

42 (9) Tracking of participating individuals and businesses by the Department of  
43 Commerce ~~and the Employment Security Commission~~ to assure program  
44 integrity and effectiveness and the compilation of data to generate the  
45 reports necessary to evaluate the success of the TJS initiative.

46 (10) Coordination and integration of existing programs in the Department of  
47 Commerce, the ~~Employment Security Commission~~, Division of Employment  
48 Security, and the North Carolina Community College System in a manner  
49 that maximizes the flexibility of these agencies to effectively assist  
50 participating individuals and businesses."

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

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

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

12 **"§ 150B-1. Policy and scope.**

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

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

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

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

34 ...

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

37 **SECTION 1.10.(c)** The Department of Commerce, Division of Employment  
38 Security and Insurance, shall adopt all existing rules and regulations in accordance with Article  
39 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted by  
40 December 31, 2012, shall expire.

41  
42 **PART II. SUBSTANTIVE AMENDMENTS AND CONFORMING CHANGES TO THE**  
43 **EMPLOYMENT SECURITY LAWS**

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

45 **"§ 96-1. Title.**

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

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

2   "**§ 96-3. ~~Employment Security Commission.~~Division of Employment Security.**

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

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

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

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

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

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

45   "**§ 96-4. ~~Administration.~~Administration; powers and duties of the Assistant Secretary;**  
46 **Board of Review.**

47       ~~(a) Duties and Powers of Commission.~~the Secretary and Assistant Secretary. – It shall  
48 be the duty of the ~~Commission~~Secretary of the Department of Commerce to administer this  
49 ~~Chapter.~~Chapter. The Secretary shall appoint an Assistant Secretary to assist in the  
50 implementation of the Employment Security Laws and the oversight of the Division of  
51 Employment Security.

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

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

37        ~~(b)(d) Regulations and General and Special Rules.~~ — Rule Making. – Rules adopted to  
38 implement the Employment Security Laws in accordance with this Chapter shall be made  
39 pursuant to Article 2 of Chapter 150B of the General Statutes, the Administrative Procedures  
40 Act. General and special rules may be adopted, amended, or rescinded by the Commission only  
41 after public hearing or opportunity to be heard thereon, of which proper notice has been given  
42 by mail to the last known address in cases of special rules, or by publication as herein provided,  
43 and by one publication as herein provided as to general rules. The Commission shall not take  
44 final action on a general or special rule that has a substantial economic impact, as defined in  
45 G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management has  
46 prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with  
47 the Secretary of State and publication in one or more newspapers of general circulation in this  
48 State. Special rules shall become effective 10 days after notification to or mailing to the last  
49 known address of the individuals or concerns affected thereby. Before the adoption,  
50 amendment, or repeal of any permanent regulation, the Commission shall publish notice of the  
51 public hearing and offer any person an opportunity to present data, opinions, and arguments.

1 The notice shall be published in one or more newspapers of general circulation in this State at  
2 least 10 days before the public hearing and at least 20 days prior to the proposed effective date  
3 of the proposed permanent regulation. The published notice of public hearing shall include the  
4 time and place of the public hearing; a statement of the manner in which data, opinions, and  
5 arguments may be submitted to or before the Commission; a statement of the terms or  
6 substance of the proposed regulation; a statement of whether a fiscal note has been or will be  
7 prepared for the proposed regulation; and the proposed effective date of the regulation. Any  
8 permanent regulation adopted after following the above procedure shall become effective on its  
9 effective date and after it is published in the manner provided for in subsection (c) as well as  
10 such additional publication as the Commission deems appropriate. Additionally, the  
11 Commission shall provide notice of adoption by mail to the last known addresses of all persons  
12 who submitted data, opinions, or arguments to the Commission with respect to the regulation.  
13 Temporary regulations may be adopted, amended, or rescinded by the Commission and shall  
14 become effective in the manner and at the time prescribed by the Commission but shall remain  
15 in force for no longer than 120 days.

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

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

33 ~~(e)~~(g) Advisory Councils. – ~~The~~ Upon recommendation of the Secretary of Commerce,  
34 the Governor shall appoint a State Advisory Council composed of men and women  
35 representing employers, employees, and the general public, in equal numbers. The ~~Chairman of~~  
36 ~~the Commission-Assistant Secretary~~ shall be a member of the State Advisory Council and shall  
37 serve as its chairman. There shall be 15 members of the Council (other than its chairman) who  
38 shall each be appointed for a term of four years. A quorum of the State Advisory Council shall  
39 consist of the chairman, or such appointed member as he may designate, plus one half of the  
40 total appointed members. The function of the Council shall be to aid the ~~Commission-Division~~  
41 in formulating policies and discussing problems related to the administration of this Chapter.  
42 Each member of the State Advisory Council attending meetings of the Council shall be paid the  
43 same amount per diem for his or her services as is provided for the members of other State  
44 boards, commissions, and committees who receive compensation for their services, including  
45 necessary time spent in traveling to and from his place of residence within the State to the place  
46 of meeting while engaged in the discharge of the duties of his office, and his actual mileage and  
47 subsistence at the same rate allowed to State officials.

48 ~~(f)~~(h) Employment Stabilization. – The ~~Commission-Secretary of Commerce, in~~  
49 consultation with the Assistant Secretary and with the advice and aid of ~~its~~ the advisory  
50 councils, ~~and through its appropriate divisions,~~ shall take all appropriate steps to reduce and  
51 prevent unemployment; to encourage and assist in the adoption of practical methods of



1 vocational training, retraining and vocational guidance; to investigate, recommend, advise, and  
2 assist in the establishment and operation, by municipalities, counties, school districts, and the  
3 State, of reserves for public works to be used in times of business depression and  
4 unemployment; to promote the reemployment of unemployed workers throughout the State in  
5 every other way that may be feasible; and to these ends to carry on and publish the results of  
6 investigations and research studies.

7 ~~(g)~~(i) Records and Reports. –

8 (1) Each employing unit shall keep true and accurate employment records,  
9 containing such information as the ~~Commission~~Division may prescribe.  
10 ~~Such~~The records shall be open to inspection and be subject to being copied  
11 by the ~~Commission~~Division or its authorized representatives at any  
12 reasonable time and as often as may be necessary. Any employing unit doing  
13 business in North Carolina shall make available in this State to the  
14 ~~Commission~~Division such information with respect to persons, firms, or  
15 other employing units performing services for it which the ~~Commission~~  
16 Secretary deems necessary in connection with the administration of this  
17 Chapter. The ~~Commission~~Division may require from any employing unit  
18 any sworn or unsworn reports, with respect to persons employed by it, which  
19 the ~~Commission~~Secretary deems necessary for the effective administration  
20 of this Chapter.

21 (2) If the ~~Commission~~Division finds that any employer has failed to file any  
22 report or return required by this Chapter or any regulation made pursuant  
23 hereto, or has filed a report which the ~~Commission~~Division finds incorrect  
24 or insufficient, the ~~Commission~~Division may make an estimate of the  
25 information required from such employer on the basis of the best evidence  
26 reasonably available to it at the time, and make, upon the basis of such  
27 estimate, a report or return on behalf of such employer, and the report or  
28 return so made shall be deemed to be prima facie correct, and the  
29 ~~Commission~~Division may make an assessment based upon such report and  
30 proceed to collect contributions due thereon in the manner as set forth in  
31 G.S. 96-10(b) of this Chapter: Provided, however, that no such report or  
32 return shall be made until the employer has first been given at least 10 days'  
33 notice by registered mail to the last known address of such employer:  
34 Provided further, that no such report or return shall be used as a basis in  
35 determining whether such employing unit is an employer within the meaning  
36 of this Chapter.

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

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

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

7 ~~(h1)~~(l) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a  
8 subpoena pursuant to subsection ~~(h)~~(k) of this section shall be heard at least ~~10~~20 days prior to  
9 the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is  
10 subject to immediate judicial review in the Superior Court of Wake County or in the superior  
11 court of the county where the person subject to the subpoena resides.

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

27 ~~(j)~~(n) Protection against Self-Incrimination. – No person shall be excused from attending  
28 and testifying or from producing books, papers, correspondence, memoranda, and other records  
29 before the ~~Commission–Division, Board of Review,~~ or in obedience to the subpoena of the  
30 ~~Commission–Division, Board of Review,~~ or any member thereof, or any duly authorized  
31 representative of the ~~Commission,–Division, or Board of Review~~ in any cause or proceeding  
32 before the ~~Commission,–Division,~~ on the ground that the testimony or evidence, documentary  
33 or otherwise, required of him may tend to incriminate him or subject him to a penalty or  
34 forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or  
35 on account of any transaction, matter, or thing concerning which he is compelled, after having  
36 claimed his privilege against self-incrimination, to testify or produce evidence, documentary or  
37 otherwise, except that such individual so testifying shall not be exempt from prosecution and  
38 punishment for perjury committed in so testifying.

39 ~~(k)~~(o) State-Federal Cooperation. – In the administration of this Chapter, the ~~Commission~~  
40 Division or Board of Review shall cooperate, to the fullest extent consistent with the provisions  
41 of this Chapter, with the federal agency, official, or bureau fully authorized and empowered to  
42 administer the provisions of the Social Security Act approved August 14, 1935, as amended,  
43 shall make such reports, in such form and containing such information as such federal agency,  
44 official, or bureau may from time to time require, and shall comply with such provisions as  
45 such federal agency, official, or bureau may from time to time find necessary to assure the  
46 correctness and verification of such reports; and shall comply with the regulations prescribed  
47 by such agency, official, or bureau governing the expenditures of such sums as may be allotted  
48 and paid to this State under Title III of the Social Security Act for the purpose of assisting in  
49 the administration of this Chapter. The ~~Commission–Division or Board of Review~~ shall further  
50 make its records available to the Railroad Retirement Board, created by the Railroad  
51 Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the

1 Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies  
2 thereof as the Board shall deem necessary for its purposes in accordance with the provisions of  
3 section 303 (c) of the Social Security Act as amended.

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

8 The ~~Commission~~-Division is authorized to make such investigations, secure and transmit  
9 such information, make available such services and facilities and exercise such of the other  
10 powers provided herein with respect to the administration of this Chapter as it deems necessary  
11 or appropriate to facilitate the administration of any employment security or public  
12 employment service law, and in like manner, to accept and utilize information, services and  
13 facilities made available to this State by the agency charged with the administration of such  
14 other employment security or public employment service law.

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

19 ~~(p)~~ Reciprocal Arrangements. –

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

23 a. Services performed by an individual for a single employing unit for  
24 which services are customarily performed in more than one state  
25 shall be deemed to be services performed entirely within any one of  
26 the states

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

36 b. Combining wage credits. – The ~~Commission~~-Division shall  
37 participate in any arrangements for the payment of compensation on  
38 the basis of combining an individual's wages and employment  
39 covered under this Chapter with his wages and employment covered  
40 under one or more laws of the federal government and the  
41 unemployment compensation laws of other states which are approved  
42 by the United States Secretary of Labor in consultation with the state  
43 unemployment compensation agencies as reasonably calculated to  
44 assure the prompt and full payment of compensation in such  
45 situations and which include provisions for (1) applying the base  
46 period of a single state law to a claim involving the combining of an  
47 individual's wages and employment covered under two or more state  
48 unemployment compensation laws, and (2) avoiding the duplicate  
49 use of wages and employment by reason of such combining.

50 c. The services of the ~~Commission~~-Division as agent may be made  
51 available to other states in taking interstate claims for such states.

- 1 d. Contributions due under this Chapter with respect to wages for  
2 insured work shall for the purposes of G.S. 96-10 be deemed to have  
3 been paid to the fund as of the date payment was made as  
4 contributions therefor under another state or federal employment  
5 security law, but no such arrangement shall be entered into unless it  
6 contains provisions for such reimbursement to the fund of such  
7 contributions as the ~~Commission~~Division finds will be fair and  
8 reasonable as to all affected interests.
- 9 e. The services of the ~~Commission~~Division may be made available to  
10 such other agencies to assist in the enforcement and collection of  
11 judgments of such other agencies.
- 12 f. The services on vessels engaged in interstate or foreign commerce  
13 for a single employer, wherever performed, shall be deemed  
14 performed within this State or within such other state.
- 15 g. Benefits paid by agencies of other states may be reimbursed to such  
16 agencies in cases where services of the claimant were "employment"  
17 under this Chapter and contributions have been paid by the employer  
18 to this agency on remuneration paid for such services; provided the  
19 amount of such reimbursement shall not exceed the amount of  
20 benefits such claimant would have been entitled to receive under the  
21 provisions of this Chapter.
- 22 (2) Reimbursements paid from the fund pursuant to subparagraphs b and c of  
23 subdivision (1) of this subsection shall be deemed to be benefits for the  
24 purpose of G.S. 96-6, 96-9, 96-12 and 96-12.01. The ~~Commission~~Division  
25 is authorized to make to other states or federal agencies and to receive from  
26 such other state or federal agencies, reimbursements from or to the fund, in  
27 accordance with arrangements entered into pursuant to subdivision (1) of  
28 this subsection.
- 29 (3) To the extent permissible under the laws and Constitution of the United  
30 States, the ~~Commission~~Division is authorized to enter into or cooperate in  
31 arrangements whereby facilities and services provided under this Chapter  
32 and facilities and services provided under the employment security law of  
33 any foreign government, may be utilized for the taking of claims and the  
34 payment of benefits under the Employment Security Law of this State or  
35 under a similar law of such government.
- 36 ~~(m)(q)~~ The ~~Commission~~Division after due notice shall have the right and power to hold  
37 and conduct hearings for the purpose of determining the rights, status and liabilities of any  
38 "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and  
39 subdivisions thereunder. The Commission shall have the power and authority to determine any  
40 and all questions and issues of fact or questions of law that may arise under the Employment  
41 Security Law that may affect the rights, liabilities and status of any employing unit or employer  
42 as heretofore defined by the Employment Security Law including the right to determine the  
43 amount of contributions, if any, which may be due the ~~Commission~~Division by any employer.  
44 Hearings may be before the ~~Commission~~ or a ~~Deputy Commissioner~~ Board of Review or the  
45 Division and shall be held in the central office of the ~~Commission~~Division or at any other  
46 designated place within the State. They shall be open to the public and shall consist of a review  
47 of the evidence taken by a hearing officer designated by the ~~Commission~~ Board of Review and  
48 a determination of the law applicable to that evidence. The ~~Commission~~Division shall provide  
49 for the taking of evidence by a hearing officer ~~who shall be a member of the legal staff of the~~  
50 ~~Commission~~ officer. Such hearing officer shall have the same power to issue subpoenas,  
51 administer oaths, conduct hearings and take evidence as is possessed by the ~~Commission~~

1 Division and such hearings shall be recorded, and he shall transmit all testimony and records of  
2 such hearings to the ~~Commission~~ Division or Board of Review for its determination. All such  
3 hearings conducted by such hearing officer shall be scheduled and held in any county in this  
4 State in which the employing unit or employer either resides, maintains a place of business, or  
5 conducts business; however, the ~~Commission~~ Division or Board of Review may require  
6 additional testimony at any hearings held by it at its office. From all decisions or  
7 determinations made by the ~~Commission or a Deputy Commissioner~~ Assistant Secretary or the  
8 Board of Review, any party affected thereby shall be entitled to an appeal to the superior court.  
9 Before ~~such a~~ party shall be allowed to appeal, ~~he~~ the party shall within 10 days after notice of  
10 such decision or determination, file with the ~~Commission~~ Board of Review exceptions to the  
11 decision or the ~~determination of the Commission~~, determination, which exceptions will state  
12 the grounds of objection to ~~such~~ the decision or determination. If any one of ~~such~~ the  
13 exceptions shall be overruled then ~~such~~ the party may appeal from the order overruling the  
14 exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of  
15 his appeal. When an exception is made to the facts as found by the ~~Commission~~, Board of  
16 Review, the appeal shall be to the superior court in term time but the decision or determination  
17 of the ~~Commission~~ Division upon such review in the superior court shall be conclusive and  
18 binding as to all questions of fact supported by any competent evidence. When an exception is  
19 made to any rulings of law, as determined by the ~~Commission~~, Board of Review, the appeal  
20 shall be to the judge of the superior court at chambers. The party appealing shall, within 10  
21 days after the notice of appeal has been served, file with the ~~Commission~~ Board of Review  
22 exceptions to the decision or determination overruling the exception which statement shall  
23 assign the errors complained of and the grounds of the appeal. Upon the filing of such  
24 statement the ~~Commission~~ Board of Review shall, within 30 days, transmit all the papers and  
25 evidence considered by it, together with the assignments of errors filed by the appellant to a  
26 judge of the superior court holding court or residing in some district in which such appellant  
27 either resides, maintains a place of business or conducts business, or, unless the appellant  
28 objects after being given reasonable opportunity to object, to a judge of the Superior Court of  
29 Wake County: Provided, however, the 30-day period specified herein may be extended by  
30 agreement of parties. ~~If there be no exceptions to any facts as found by the Commission the~~  
31 ~~facts so found shall be binding upon the court and it shall be heard by the judge at chambers at~~  
32 ~~some place in the district, above mentioned, of which all parties shall have 10 days' notice.~~

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

49 ~~(o)~~(s) The decision or determination of the ~~Commission~~ Division when docketed in the  
50 office of the clerk of the superior court of any county and when properly indexed and  
51 cross-indexed shall have the same force and effect as a judgment rendered by the superior

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

29 ~~(p)~~(t) The conduct of hearings shall be governed by suitable rules and regulations  
30 established by the ~~Commission~~-Secretary of Commerce. The manner in which appeals and  
31 hearings shall be presented and conducted before the ~~Commission~~-Division shall be governed  
32 by suitable rules and regulations established by ~~it~~-the Secretary. The ~~Commission~~-Division  
33 shall not be bound by common-law or statutory rules of evidence or by technical or formal  
34 rules of procedure but shall conduct hearings in such manner as to ascertain the substantial  
35 rights of the parties.

36 ~~(q)~~(u) Notices of hearing shall be issued by the ~~Commission~~-Division or its authorized  
37 representative and sent by registered mail, return receipt requested, to the last known address of  
38 any employing unit, employers, persons, or firms involved. The notice shall be sent at least  
39 ~~10~~15 days prior to the hearing date and shall contain notification of the place, date, hour, and  
40 purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the  
41 ~~Commission~~-Division or its authorized representative and shall order ~~him~~-the witness to appear  
42 at the time, date and place shown thereon. Any bond or other undertaking required to be given  
43 in order to suspend or stay any execution shall be given payable to the ~~Employment Security~~  
44 ~~Commission of North Carolina~~-Department of Commerce. Any such bond or other undertaking  
45 may be forfeited or sued upon as are any other undertakings payable to the State.

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

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

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

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

32            (2) Job Service Information. – (i) Except as hereinafter otherwise provided it is  
33 unlawful for any person to disclose any information obtained by the ~~North~~  
34 ~~Carolina State Employment Service~~Division from workers, employers,  
35 applicants, or other persons or groups of persons in the course of  
36 administering the State Public Employment Service Program. Provided,  
37 however, that if all interested parties waive in writing the right to hold such  
38 information confidential, the information may be disclosed and used but  
39 only for those purposes that the parties and the ~~Commission~~Division have  
40 agreed upon in writing. (ii) The ~~Employment Service~~Division shall make  
41 public, through the newspapers and any other suitable media, information as  
42 to job openings and available applicants for the purpose of supplying the  
43 demand for workers and employment. (iii) The Labor Market Information  
44 ~~Division~~Unit shall collect, collate, and publish statistical and other  
45 information relating to the work under the ~~Commission's~~Division's  
46 jurisdiction; investigate economic developments, and the extent and causes  
47 of unemployment and its remedies with the view of preparing for the  
48 information of the General Assembly such facts as in the  
49 ~~Commission's~~Division's opinion may make further legislation desirable. (iv)  
50 Except as provided by ~~Commission~~regulation, rules adopted by the  
51 Division, any information published pursuant to this subdivision shall not be

- 1 published in any manner revealing the identity of the applicant or the  
2 employing unit.
- 3 (3) Penalties for Disclosure or Improper Use. – Any person violating any  
4 provision of this section may be fined not less than twenty dollars (\$20.00)  
5 nor more than two hundred dollars (~~\$200.00~~), or imprisoned for not longer  
6 ~~than 90 days, or both (\$200.00).~~
- 7 (4) Regulations. – The ~~Commission~~ Division may provide by ~~regulation~~ rule for  
8 procedures by which requests for information will be considered and the  
9 methods by which such information may be disclosed. The ~~Commission~~  
10 Division is authorized to provide by regulation for the assessment of fees for  
11 securing and copying information released under this section.
- 12 (5) Privileged Status of Letters and Reports and Other Information Relating to  
13 Administration of this Chapter. – All letters, reports, communication, or any  
14 other matters, either oral or written, including any testimony at any hearing,  
15 from the employer or employee to each other or to the ~~Commission~~ Division  
16 or any of its agents, representatives, or employees, which letters, reports, or  
17 other communication shall have been written, sent, delivered, or made in  
18 connection with the requirements of the administration of this Chapter, shall  
19 be absolutely privileged communication in any civil or criminal proceedings  
20 except proceedings pursuant to or involving the administration of this  
21 Chapter and except proceedings involving child support and only for the  
22 purpose of establishing the payment and amount of unemployment  
23 compensation benefits. Nothing in this subdivision shall be construed to  
24 prohibit the ~~Commission~~ Division, upon written request and on a  
25 reimbursable basis only, from disclosing information from the records of a  
26 proceeding ~~before an appeals referee, deputy commissioner, or other hearing~~  
27 ~~officer by whatever name called~~, compiled for the purpose of resolving  
28 issues raised pursuant to the Employment Security Law.
- 29 (6) Nothing in this subsection (t) shall operate to relieve any claimant or  
30 employing unit from disclosing any information required by this Chapter or  
31 by regulations promulgated thereunder.
- 32 (7) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~  
33 Division from allowing any individual or entity to examine and copy any  
34 report, return, or any other written communication made by that individual  
35 or entity to the ~~Commission~~ Division, its agents, or its employees.
- 36 (7a) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~  
37 Division from disclosing, upon request and on a reimbursable basis only, to  
38 officers and employees of the Department of Housing and Urban  
39 Development and to representatives of a public housing agency as defined in  
40 Section 303(i)(4) of the Social Security Act, any information from the  
41 records of the ~~Employment Security Commission~~ Division with respect to  
42 individuals applying for or participating in any housing assistance program  
43 administered by the Department of Housing and Urban Development who  
44 have signed an appropriate consent form approved by the Secretary of  
45 Housing and Urban Development. It is the purpose of this paragraph to  
46 assure the ~~Employment Security Commission's~~ compliance with Section  
47 303(i)(1) of the Social Security Act and it shall be construed accordingly.
- 48 (7b) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~  
49 Division from disclosing, upon request and on a reimbursable basis, to the  
50 Secretary of Health and Human Services, any information from the records  
51 of the ~~Employment Security Commission~~ Division as may be required by



1 Section 303(h)(1) of the Social Security Act. It is the purpose of this  
2 paragraph to assure compliance with Section 303(h)(1) of the Social Security  
3 Act and it shall be construed accordingly.

- 4 (8) Any finding of fact or law, judgment, determination, conclusion or final  
5 order made by ~~an adjudicator, appeals referee, commissioner, the~~  
6 ~~Commission~~ the Assistant Secretary, the Board of Review, a hearing officer,  
7 appeals referee, or any other person acting under authority of the  
8 ~~Commission~~ Division pursuant to the Employment Security Law is not  
9 admissible or binding in any separate or subsequent action or proceeding,  
10 between a person and his present or previous employer brought before an  
11 arbitrator, court or judge of this State or the United States, regardless of  
12 whether the prior action was between the same or related parties or involved  
13 the same facts.

14 Provided, however, any finding of fact or law, judgment, determination,  
15 conclusion, or final order made by ~~an adjudicator, appeals referee,~~  
16 ~~commissioner, the Commission~~ the Assistant Secretary, the Board of  
17 Review, a hearing officer, appeals referee, or any other person acting under  
18 the authority of the Commission pursuant to the Employment Security Law  
19 shall be admissible in proceedings before the North Carolina Industrial  
20 Commission.

21 ~~(u)~~(y) Service of process upon the ~~Commission~~ Division in any proceeding instituted  
22 before an administrative agency or court of this State shall be pursuant to G.S. 1A-1, Rule  
23 4(j)(4); however, notice of the requirement to withhold unemployment compensation benefits  
24 pursuant to G.S. 110-136.2(f) shall be served upon the process agent for the ~~Employment~~  
25 ~~Security Commission~~ Division by regular or courier mail.

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

- 28 (1) All requests for advisory rulings shall be made in writing and submitted to  
29 the ~~Chief Counsel~~ Division. Such requests shall state the facts and statutes or  
30 rules on which the ruling is requested.
- 31 (2) The ~~Chief Counsel~~ Division may request from any person securing an  
32 advisory ruling any additional information that is necessary. Failure to  
33 supply such additional information shall be cause for the ~~Commission~~  
34 Division to decline to issue an advisory ruling.
- 35 (3) The ~~Commission~~ Division may decline to issue an advisory ruling if any  
36 administrative or judicial proceeding is pending with the person requesting  
37 the ruling on the same factual grounds. The ~~Commission~~ Division may  
38 decline to issue an advisory ruling if such a ruling may harm the  
39 ~~Commission's~~ Division's interest in any litigation in which it is or may be a  
40 party.
- 41 (4) All advisory rulings shall be issued no later than 30 days from the date all  
42 information necessary to make a ruling has been received by the ~~Chief~~  
43 ~~Counsel~~ Division.
- 44 (5) No advisory ruling shall be binding upon the ~~Commission~~ Division provided  
45 that in any subsequent enforcement action initiated by the ~~Commission,~~  
46 Division, any person's reliance on such ruling shall be considered in  
47 mitigation of any penalty sought to be assessed."

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

49 **"§ 96-5. Employment Security Administration Fund.**

50 (a) Special Fund. – There is hereby created in the State treasury a special fund to be  
51 known as the Employment Security Administration Fund. All moneys which are deposited or

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

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

48 (c) There is hereby created in the State treasury a special fund to be known as the  
49 Special Employment Security Administration Fund. All interest and penalties, regardless of  
50 when the same became payable, collected from employers under the provisions of this Chapter  
51 subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly,

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

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

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

46 (e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General  
47 Assembly of North Carolina to the ~~Employment-Security-Commission-Department of~~  
48 Commerce, Division of Employment Security out of funds credited to and held in this State's  
49 account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States  
50 pursuant to and in accordance with section 903 of the Social Security Act, the ~~Commission~~  
51 Division is authorized to utilize such funds for the administration of the Employment Security

1 Law, including personal services, operating and other expenses incurred in the administration  
2 of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or  
3 parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings  
4 or parts of buildings, suitable for use in this State by the ~~Employment Security Commission,~~  
5 Division, and for the payment of expenses incurred for the construction, maintenance,  
6 improvements or repair of, or alterations to, such real or personal property. Provided, that any  
7 such funds appropriated by the General Assembly shall not exceed the amount in the  
8 Unemployment Trust Fund which may be obligated for expenditure for such purposes; and  
9 provided that said funds shall not be obligated for expenditure, as herein provided, after the  
10 close of the two-year period which begins on the effective date of the appropriation.

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

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

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

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

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

45 (g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not  
46 more than a total of twenty-five million dollars (\$25,000,000) of funds in the Employment  
47 Security ~~Commission~~ Reserve Fund established under subsection (f) of this section in securities  
48 issued by the North Carolina Technological Development Authority, Inc., the proceeds for  
49 which are directed to support investment in venture capital funds. The State Treasurer shall  
50 report to the Joint Legislative Commission on Governmental Operations and the Fiscal

1 Research Division on October 1 and March 1 of each fiscal year on investments made pursuant  
2 to this subsection."

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

4 "**§ 96-6. Unemployment Insurance Fund.**

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

- 9 (1) All contributions collected under this Chapter, together with any interest  
10 earned upon any moneys in the fund;
- 11 (2) Any property or securities acquired through the use of moneys belonging to  
12 the fund;
- 13 (3) All earnings of such property or securities;
- 14 (4) Any moneys received from the federal unemployment account in the  
15 unemployment trust fund in accordance with Title XII of the Social Security  
16 Act as amended;
- 17 (5) All moneys credited to this State's account in the Unemployment Trust Fund  
18 pursuant to section 903 of Title IX of the Social Security Act, as amended,  
19 (U.S.C.A. Title 42, sec. 1103 (a));
- 20 (6) All moneys paid to this State pursuant to section 204 of the Federal-State  
21 Extended Unemployment Compensation Act of 1970;
- 22 (7) Reimbursement payments in lieu of contributions.

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

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

- 28 (1) A clearing account,
- 29 (2) An unemployment trust fund account, and
- 30 (3) A benefit account.

31 All moneys payable to the fund, upon receipt thereof by the ~~Commission~~Division, shall be  
32 forwarded immediately to the treasurer who shall immediately deposit them in the clearing  
33 account. Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon  
34 warrants issued upon the treasurer as provided in G.S. 143B-426.40G under the requisition of  
35 the ~~Commission~~Division. After clearance thereof, all other moneys in the clearing account  
36 shall be immediately deposited with the secretary of the treasury of the United States of  
37 America to the credit of the account of this State in the unemployment trust fund, established  
38 and maintained pursuant to section 904 of the Social Security Act, as amended, any provision  
39 of law in this State relating to the deposit, administration, release, or disbursement of moneys in  
40 the possession or custody of this State to the contrary notwithstanding. The benefit account  
41 shall consist of all moneys requisitioned from this State's account in the unemployment trust  
42 fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the  
43 direction of the ~~Commission~~Secretary, in any bank or public depository in which general  
44 funds of the State may be deposited, but no public deposit insurance charge or premium shall  
45 be paid out of the fund. The State Treasurer shall be liable on his official bond for the faithful  
46 performance of his duties in connection with the unemployment insurance fund provided for  
47 under this Chapter. Such liability on the official bond shall be effective immediately upon the  
48 enactment of this provision, and such liability shall exist in addition to any liability upon any  
49 separate bond existent on the effective date of this provision, or which may be given in the  
50 future. All sums recovered on any surety bond for losses sustained by the unemployment  
51 insurance fund shall be deposited in said fund.

1 (c) Moneys shall be requisitioned from this State's account in the unemployment trust  
2 fund solely for the payment of benefits (including extended benefits) and in accordance with  
3 regulations prescribed by the ~~Commission-Secretary~~. The ~~Commission-Division~~ shall, from  
4 time to time, requisition from the unemployment trust fund such amounts, not exceeding the  
5 accounts standing to its account therein, as it deems necessary for the payment of benefits for a  
6 reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the  
7 benefit account and shall pay all warrants drawn thereon as provided in G.S. 143B-426.40G  
8 and requisitioned by the ~~Commission-Division~~ for the payment of benefits solely from such  
9 benefit account. Expenditures of such moneys in the benefit account and refunds from the  
10 clearing account shall not be subject to approval of the Budget Bureau or any provisions of law  
11 requiring specific appropriations or other formal release by State officers of money in their  
12 custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be  
13 issued as provided in G.S. 143B-426.40G as requisitioned by the ~~chairman of the Commission~~  
14 ~~Secretary, the Assistant Secretary,~~ or a duly authorized agent of the ~~Commission-Division~~ for  
15 that purpose. Any balance of moneys requisitioned from the unemployment trust fund which  
16 remains unclaimed or unpaid in the benefit account after the expiration of the period for which  
17 such sums were requisitioned shall either be deducted from estimates for, and may be utilized  
18 for the payment of, benefits during succeeding periods, or, in the discretion of the Commission,  
19 shall be redeposited with the Secretary of the Treasury of the United States of America, to the  
20 credit of this State's account in the unemployment trust fund, as provided in subsection (b) of  
21 this section.

22 (d) Management of Funds upon Discontinuance of Unemployment Trust Fund. – The  
23 provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment  
24 trust fund, shall be operative only so long as such unemployment trust fund continues to exist,  
25 and so long as the Secretary of the Treasury of the United States of America continues to  
26 maintain for this State a separate book account of all funds deposited therein by this State for  
27 benefit purposes, together with this State's proportionate share of the earnings of such  
28 unemployment trust fund, from which no other state is permitted to make withdrawals. If and  
29 when such unemployment trust fund ceases to exist, or such separate book account is no longer  
30 maintained, all moneys, properties, or securities therein belonging to the Unemployment  
31 Insurance Fund of this State shall be transferred to the treasurer of the Unemployment  
32 Insurance Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys,  
33 properties, or securities in a manner approved by the ~~Commission-Secretary of the Department~~  
34 ~~of Commerce,~~ in accordance with the provisions of this Chapter: Provided, that such moneys  
35 shall be invested in the following readily marketable classes of securities: Bonds or other  
36 interest-bearing obligations of the United States of America or such investments as are now  
37 permitted by law for sinking funds of the State of North Carolina; and provided further, that  
38 such investment shall at all times be so made that all the assets of the fund shall always be  
39 readily convertible into cash when needed for the payment of benefits. The treasurer shall  
40 dispose of securities or other properties belonging to the Unemployment Insurance Fund only  
41 under the direction of the ~~Commission-Secretary of the Department of Commerce.~~

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

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

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

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

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

5 **SECTION 2.7.(b)** G.S. 96-8 is amended by adding the following new subdivisions  
6 to read:

7 **"§ 96-8. Definitions.**

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

9 ...

10 (3a) Department. – The North Carolina Department of Commerce.

11 (3b) Division or DES. – The Department's Division of Employment Security.

12 (3c) EIS. – The Employment Insurance Section of DES.

13 (3d) ESS. – The Employment Security Section of DES.

14 ...

15 (8c) Secretary. – The Secretary of the Department of Commerce or the Assistant  
16 Secretary in charge of the Division of Employment Security.

17 ...."

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

19 "(5) "Employer" means:

20 a. Any employing unit which (a) within the current or preceding  
21 calendar year, and which for some portion of a day in each of 20  
22 different calendar weeks within such calendar year (whether or not  
23 such weeks are or were consecutive), has or had in employment one  
24 or more individuals (not necessarily simultaneously and irrespective  
25 of whether the same individuals are or were employed in each such  
26 week); or (b) in any calendar quarter in either the current or  
27 preceding calendar year paid for service in employment wages of one  
28 thousand five hundred dollars (\$1,500) or more. Provided further, for  
29 the purpose of this paragraph, "employment" shall include services  
30 which would constitute "employment" but for the fact that such  
31 services are deemed to be performed entirely within another state  
32 pursuant to an election under an arrangement entered into by the  
33 ~~Commission~~ Division pursuant to subsection (l) of G.S. 96-4, and an  
34 agency charged with the administration of any other state or federal  
35 employment security law. Provided further, for the purpose of this  
36 paragraph, "week" means a period of seven consecutive calendar  
37 days, and when a calendar week falls partly within each of two  
38 calendar years, the days of that week up to January 1 shall be deemed  
39 one calendar week, and the days beginning January 1, another such  
40 week.

41 b. Any employing unit which acquired the organization, trade or  
42 business, or substantially all the assets thereof, of another which at  
43 the time of such acquisition was an employer subject to this Chapter,  
44 or which acquired a part of the organization, trade, or business of  
45 another, which at the time of such acquisition was an employer  
46 subject to this Chapter; provided, such other would have been an  
47 employer under paragraph a of this subdivision if such part had  
48 constituted its entire organization, trade, or business; provided  
49 further, that G.S. 96-10, subsection (d), shall not be applicable to an  
50 individual or employing unit acquiring such part of the organization,  
51 trade or business. The provisions of G.S. 96-11(a) to the contrary

notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this Chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this Chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the Commission within 60 days from the date the ~~Commission~~ Division mails him a notification of his liability and provided the ~~Commission~~ Division finds the predecessor was an employer at the time of such acquisition only because such predecessor had failed to make application for termination of coverage as provided in G.S. 96-11 of this Chapter. A successor under the provisions of this paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the ~~Commission~~ Division within 60 days from the date the ~~Commission~~ Division mails him a notification of his liability and the ~~Commission~~ Division finds that the predecessor could have terminated by making the application under G.S. 96-11 if the part acquired had constituted all of the predecessor's business."

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

"(6) d. Services not covered under paragraph b of this subdivision, and performed entirely without this State, with respect to no part of which contributions are required and paid under an employment security law of any other state or of the federal government, shall be deemed to be employment subject to this Chapter if the individual performing such service is a resident of this State and the ~~Commission~~ Division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Chapter, and services covered by an election duly approved by the ~~Commission~~ Division in accordance with an arrangement pursuant to subsection (l) of G.S. 96-4 shall be deemed to be employment during the effective period of such election.

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

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

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

...



- 1                                   3.     Service with respect to which unemployment insurance is  
2                                   payable under an employment security system established by  
3                                   an act of Congress: Provided, that the ~~Commission~~ Division  
4                                   is hereby authorized and directed to enter into agreements  
5                                   with the proper agencies under such act of Congress, which  
6                                   agreements shall become effective 10 days after publication  
7                                   thereof in the manner provided in G.S. 96-4(b) for general  
8                                   rules, to provide potential rights to benefits under this  
9                                   Chapter, acquired rights to unemployment insurance under  
10                                  act of Congress, or who have, after acquiring potential rights  
11                                  to unemployment insurance, under such act of Congress,  
12                                  acquired rights to benefits under this Chapter.

13                                  ...."

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

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

- 16                   a.     For the purpose of establishing a benefit year, an individual shall be  
17                   deemed to be unemployed:
- 18                   1.     If the individual has payroll attachment but, because of lack  
19                   of work during the payroll week for which the individual is  
20                   requesting the establishment of a benefit year, the individual  
21                   worked less than the equivalent of three customary scheduled  
22                   full-time days in the establishment, plant, or industry in  
23                   which the individual has payroll attachment as a regular  
24                   employee. If a benefit year is established, it shall begin on the  
25                   Sunday preceding the payroll week ending date.
- 26                   2.     If the individual has no payroll attachment on the date the  
27                   individual reports to apply for unemployment insurance. If a  
28                   benefit year is established, it shall begin on the Sunday of the  
29                   calendar week with respect to which the claimant met the  
30                   reporting requirements provided by ~~Commission~~  
31                   ~~regulation~~ rules adopted by the Division.
- 32                   b.     For benefit weeks within an established benefit year, a claimant shall  
33                   be deemed to be:
- 34                   1.     Totally unemployed, irrespective of job attachment, if a  
35                   claimant's earnings for such week, including payments  
36                   defined in subparagraph c below, would not reduce the  
37                   claimant's weekly benefit amount as prescribed by  
38                   G.S. 96-12(c).
- 39                   2.     Partially unemployed, if the claimant has payroll attachment  
40                   but because of lack of work during the payroll week for  
41                   which the claimant is requesting benefits the claimant worked  
42                   less than three customary scheduled full-time days in the  
43                   establishment, plant, or industry in which the claimant is  
44                   employed and whose earnings from such employment  
45                   (including payments defined in subparagraph c below) would  
46                   qualify the claimant for a reduced payment as prescribed by  
47                   G.S. 96-12(c).
- 48                   3.     Part-totally unemployed, if the claimant had no job  
49                   attachment during all or part of such week and whose  
50                   earnings for odd jobs or subsidiary work (including payments

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

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

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

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

...

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

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

"(22) Average Weekly Insured Wage. – "Average weekly insured wage" is the quotient obtained by dividing the total of the wages, as defined in G.S. 96-8(12) and (13), reported by all insured employers by the monthly average in insured employment under this Chapter during the immediately preceding calendar year and further dividing the quotient obtained by 52 to obtain a weekly rate. (For this computation the data as released annually in

1 the ~~Employment Security Commission's~~ Division's publication "North  
2 Carolina Insured Employment and Wage Payment" shall be used). The  
3 quotient thus obtained shall be deemed to be the average weekly wage for  
4 such year.

5 ...  
6 (24) Work, for purposes of this Chapter, means any bona fide permanent  
7 employment the acceptance of which would not result in an undue family  
8 hardship as defined in G.S. 96-8(10a). For purposes of this definition, "bona  
9 fide permanent employment" is presumed to include only those  
10 employments of greater than 30 consecutive calendar days duration  
11 (regardless of whether work is performed on all those days) provided: (a) the  
12 presumption that an employment lasting 30 days or less is not bona fide  
13 permanent employment may be rebutted by a finding by the ~~Commission,~~  
14 Division, either on its own motion or upon a clear and convincing showing  
15 by an interested party that the application of the presumption would work a  
16 substantial injustice in view of the intent of this Chapter; (b) Any decision of  
17 the ~~Commission~~ Division on the question of bona fide employment may be  
18 disturbed on judicial review only upon a finding of plain error."

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

20 **"§ 96-9. Contributions.**

21 (a) Payment. –

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

51 ...

- 1 (3) Benefits paid employees of this State shall be financed and administered in  
2 accordance with the provisions and conditions of G.S. 96-9(d) required for  
3 nonprofit organizations; except as provided by suitable regulations which  
4 may be adopted by the ~~Commission~~Division. The Department of  
5 Administration shall make an election with respect to financing all such  
6 benefits.  
7
- 8 (6) If the amount of the contributions shown to be due after all credits is less  
9 than five dollars (\$5.00), no payment need be made. If an employer has paid  
10 contributions, penalties, and/or interest in excess of the amount due, this  
11 shall be considered an overpayment and refunded provided no other debts  
12 are owed to the ~~Commission~~Division by the employer. Overpayments of  
13 less than five dollars (\$5.00) shall be refunded only upon receipt by the  
14 Chairman of a written demand for such refund from the employer. Nothing  
15 herein shall be construed to change or extend the limitation set forth in  
16 G.S. 96-10(e), (f), and (i).  
17 (7) Effective with the quarter ending September 30, 1999, every employer with  
18 100 or more employees, and every person or organization that, as agent,  
19 reports wages on a total of 100 or more employees on behalf of one or more  
20 subject employers, shall file that portion of the "Employer's Quarterly Tax  
21 and Wage Report" that contains the name, social security number, and gross  
22 wages of each individual in employment on magnetic tapes or diskettes in a  
23 format prescribed by the ~~Commission~~Division.  
24 For failure of an employer to comply with this subdivision, there shall be  
25 added to the amount required to be shown as tax in the reports a penalty of  
26 twenty-five dollars (\$25.00). For failure of an agent to comply with this  
27 subdivision, the ~~Commission~~Division may deny the agent the right to report  
28 wages and file reports for the employer for whom the agent filed an  
29 improper report for a period of one year following the calendar quarter in  
30 which that agent filed the improper report. The ~~Commission~~Division may  
31 reduce or waive a penalty for good cause shown.  
32 (8) An employer of domestic service employees as defined by the Internal  
33 Revenue Code may be given permission by the ~~Chair of the Commission~~  
34 Secretary to file reports once a year on or before the last day of the month  
35 following the close of the calendar year in which the wages are paid.  
36 Permission to file a report annually may be revoked if the employer is found  
37 liable to the ~~Commission~~Division for quarterly contributions under  
38 subdivision (6) of this subsection.  
39 (9) Employers who are granted permission under subdivision (8) of this  
40 subsection to file annual reports may be given permission to file reports by  
41 telephone. Employers who report by telephone must contact either the Field  
42 Tax Auditor who is assigned to the employer's account or the  
43 ~~Unemployment Insurance Division~~Employment Insurance Section in  
44 Raleigh and report the required information to that Auditor or to the Division  
45 by the date the report is due under subdivision (8) of this subsection.  
46 (10) Employers electing to do so may pay their quarterly tax contributions by  
47 electronic funds transfer. When an electronic funds transfer cannot be  
48 completed due to insufficient funds or the nonexistence of an account of the  
49 transferor, the ~~Commission~~Division shall assess a penalty equal to ten  
50 percent (10%) of the amount of the transfer, subject to a minimum of one  
51 dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). The

1           ~~Commission–Division~~ may waive this penalty for good cause shown. As  
2           used in this section, the term "electronic funds transfer" means a transfer of  
3           funds initiated by using an electronic terminal, a telephone, a computer, or  
4           magnetic tape to instruct or authorize a financial institution or its agent to  
5           credit or debit an account.

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

14          (b) Rate of Contributions. –

15           ...

- 16          (2) Experience Rating. –

17           ...

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

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

44          d. Other Provisions. – No employer's contribution rate shall be reduced  
45          below the standard rate for any calendar year unless its liability  
46          extends over a period of all or part of two consecutive calendar years  
47          and, as of August 1 of the second year, its credit reserve ratio meets  
48          the requirements of that schedule used in computing rates for the  
49          following calendar year, unless the employer's liability was  
50          established under G.S. 96-8(5)b and its predecessor's account was  
51          transferred as provided by G.S. 96-9(c)(4)a.

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

(3) ...  
d3.

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

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:



		Rate Schedules (%)									
		A	B	C	D	E	F	G	H	I	
1											
2	As But										
3	Much Less										
4	As Than										
5											
6	0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
7	0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
8	0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
9	0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
10	0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
11	1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
12	1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
13	1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
14	1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
15	1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
16	2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
17	2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
18	2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
19	2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
20	2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
21	3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
22	3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
23	3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
24	3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
25	3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
26	4.0%										
27	&										
28	OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

29  
30

31 d5. The standard contribution rate set by subdivision (b)(1) of this  
 32 section applies to an employer unless the employer's account has a  
 33 credit balance. Beginning January 1, 1999, for any calendar year that  
 34 the training and reemployment contribution in G.S. 96-6.1 applies,  
 35 the contribution rate of an employer whose account has a credit  
 36 balance is determined in accordance with the rate set in the following  
 37 Experience Rating Formula table for the applicable rate schedule.  
 38 The contribution rate of an employer whose contribution rate is  
 39 determined by this Experience Rating Formula table shall be reduced  
 40 by fifty percent (50%) for any year in which the balance in the  
 41 Unemployment Insurance Fund on computation date equals or  
 42 exceeds one and ninety-five hundredths percent (1.95%) of the gross  
 43 taxable wages reported to the ~~Commission~~ Division in the previous  
 44 calendar year, and the fund ratio determined on that date is less than  
 45 five percent (5%) and shall be reduced by sixty percent (60%) for  
 46 any year in which the balance in the Unemployment Insurance Fund  
 47 on computation date equals or exceeds one and ninety-five  
 48 hundredths percent (1.95%) of the gross taxable wages reported to  
 49 the ~~Commission~~ Division in the previous calendar year, and the fund  
 50 ratio determined on that date is five percent (5%) or more.  
 51

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As But  
 Much Less  
 As Than

Rate Schedules (%)

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

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

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

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

13 j. A tax is imposed upon contributions at the rate of twenty percent  
14 (20%) of the amount of contributions due. The tax is due and payable  
15 at the time and in the same manner as the contributions. The tax does  
16 not apply in a calendar year if, as of August 1 of the preceding year,  
17 either of the following conditions was met; (i) the amount in the  
18 Reserve Fund equals or exceeds one hundred sixty-three million  
19 three hundred forty-nine thousand dollars (\$163,349,000), which is  
20 one percent (1%) of taxable wages for calendar year 1984; or (ii) the  
21 balance in the Unemployment Insurance Fund established by  
22 G.S. 96-6(a) is five hundred million (\$500,000,000) or less. The  
23 collection of this tax, the assessment of interest and penalties on  
24 unpaid taxes, the filing of judgment liens, and the enforcement of the  
25 liens for unpaid taxes is governed by the provisions of G.S. 96-10  
26 where applicable. Taxes collected under this subpart shall be credited  
27 to the Employment Security ~~Commission~~-Reserve Fund, and refunds  
28 of the taxes shall be paid from the same Fund. The clear proceeds of  
29 any civil penalties collected under this subpart shall be remitted to  
30 the Civil Penalty and Forfeiture Fund in accordance with  
31 G.S. 115C-457.2. Any interest collected on unpaid taxes shall be  
32 credited to the Special Employment Security Administration Fund,  
33 and any interest refunded on taxes imposed by this subpart shall be  
34 paid from the same Fund.

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

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

13 (2) Charging of benefit payments. –

14 ...

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

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

43 No benefit charges shall be made to the account of any employer  
44 for benefit years ending on or before June 30, 1992, where benefits  
45 were paid as a result of a discharge due directly to the reemployment  
46 of a veteran mandated by the Veteran's Reemployment Rights Law,  
47 38 USCA § 2021, et seq.

48 No benefit charges shall be made to the account of any employer  
49 where benefits are paid as a result of a decision by ~~an Adjudicator,~~  
50 ~~Appeals Referee or the Commission~~ the Division if such decision to  
51 pay benefits is ultimately reversed; nor shall any such benefits paid

1 be deemed to constitute an overpayment under G.S. 96-18(g)(2), the  
2 provisions thereof notwithstanding. Provided, an overpayment of  
3 benefits paid shall be established in order to provide for the waiting  
4 period required by G.S. 96-13(c).

5 ...  
6 (3) As of July 31 of each year, and prior to January 1 of the succeeding year, the  
7 ~~Commission~~ Division shall determine the balance of each employer's  
8 account and shall furnish him with a statement of all charges and credits  
9 thereto. At the same time the ~~Commission~~ Division shall notify each  
10 employer of his rate of contributions as determined for the succeeding  
11 calendar year pursuant to this section. Such determination shall become final  
12 unless the employer files an application for review or redetermination prior  
13 to May 1 following the effective date of such rates. The ~~Commission~~  
14 Division may redetermine on its own motion within the same period of time.

15 (4) Transfer of account. –

16 a. ...

17 2. Consent. – When an employer, as defined in G.S. 96-8(5)b.,  
18 in any manner acquires a distinct and severable portion of the  
19 organization, trade, or business of another employing unit, the  
20 part of the account of the predecessor that relates to the  
21 acquired portion of the business shall, upon the mutual  
22 consent of the parties concerned and approval of the  
23 ~~Commission~~ Division in conformity with the regulations as  
24 prescribed therefor, be transferred as of the date of acquisition  
25 to the successor employer for use in the determination of the  
26 successor's rate of contributions, provided application for  
27 transfer is made within 60 days after the ~~Commission~~  
28 Division notifies the successor of the right to request such  
29 transfer, otherwise the effective date of the transfer shall be  
30 the first day of the calendar quarter in which such application  
31 is filed, and that after the transfer the successor employing  
32 unit continues to operate the transferred portion of such  
33 organization, trade or business. On or after January 1, 2006,  
34 whenever part of an organization, trade, or business is  
35 transferred between entities subject to substantially common  
36 ownership, management, or control, the tax account shall be  
37 transferred in accordance with regulations. However,  
38 employing units transferring entities with any common  
39 ownership, management, or control are not entitled to  
40 separate and distinct employer status under this Chapter.  
41 Provided, however, that the transfer of an account for the  
42 purpose of computation of rates shall be deemed to have been  
43 made prior to the computation date falling within the calendar  
44 year within which the effective date of such transfer occurs  
45 and the account shall thereafter be used in the computation of  
46 the rate of the successor employer for succeeding years,  
47 subject, however, to the provisions of paragraph b of this  
48 subdivision. No request for a transfer of the account will be  
49 accepted and no transfer of the account will be made if the  
50 request for the transfer of the account is not received within  
51 two years of the date of acquisition or notification by the

~~Commission~~-Division of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

...

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

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

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

...

(6) If the ~~Commission~~-Division finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the United Nations, such employer's experience rating account shall not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of such person or persons, the employer's account shall be

1 deemed to have been chargeable with benefits throughout more than 13  
2 consecutive calendar months ending July 31 immediately preceding the  
3 computation date. This subdivision shall apply only to employers who are  
4 liable for contributions under the experience rating system of financing  
5 unemployment benefits. This subdivision shall not be construed to apply to  
6 employers who are liable for payments in lieu of contributions or to  
7 employers using the reimbursable method of financing benefit payments.

8 (d) Benefits paid to employees of nonprofit organizations shall be financed in  
9 accordance with the provisions of this paragraph. For the purposes of this paragraph, a  
10 nonprofit organization is an organization (or group of organizations) described in section  
11 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of  
12 the Internal Revenue Code.

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

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

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

43 d. Any nonprofit organization which has been paying contributions  
44 under this Chapter for a period of at least four consecutive calendar  
45 years subsequent to January 1, 1972, may elect to change to a  
46 reimbursement basis by filing with the ~~Commission~~ Division not  
47 later than 30 days prior to the next January 1 a written notice of  
48 election to become liable for payments in lieu of contributions,  
49 effective on such January 1. Such election shall not be terminable for  
50 a period of four calendar years. In the event of such an election, the  
51 account of such employer shall be closed and shall not be used in any

- 1 future computation of such employer's contribution rate in any  
2 manner whatsoever.
- 3 d1. Any nonprofit organization which makes an election in accordance  
4 with subparagraph b. of this paragraph must secure such election by  
5 making a payment in lieu of contributions as provided in subdivision  
6 (2) of this subsection, posting a surety bond from an insurance  
7 company duly licensed to conduct business in this State, or obtaining  
8 an irrevocable letter of credit with the ~~Commission~~Division to insure  
9 the payments in lieu of contributions as provided in subdivision (2)  
10 of this subsection. Any surety bond posted under this paragraph shall  
11 be in force for a period of not less than two calendar years and shall  
12 be renewed with the approval of the ~~Commission~~Division. The  
13 ~~Commission~~Division may adopt rules to implement the provisions  
14 of this subparagraph.
- 15 e. The ~~Commission~~Division, in accordance with such regulations as it  
16 may adopt, shall notify each nonprofit organization of any  
17 determination which it may make of its status as an employer and of  
18 the effective date of any election which it makes and of any  
19 termination of such election. Such determinations shall be subject to  
20 reconsideration, appeal and review.
- 21 (2) Payments in lieu of contributions shall be made in accordance with the  
22 provisions of this subparagraph and shall be processed as provided herein.
- 23 a. Quarterly contributions and wage reports and advance payments shall  
24 be submitted to the ~~Commission~~Division quarterly under the same  
25 conditions and requirements of G.S. 96-9 and 96-10, except that the  
26 amount of advance payments shall be computed as one percent (1%)  
27 of taxable wages and entered on such reports; provided that such  
28 advance payments shall become effective only with respect to the  
29 first four thousand two hundred dollars (\$4,200) in wages paid in a  
30 calendar year until January 1, 1978. On and after that date advance  
31 payments shall be effective with respect to the federally required  
32 wage base provided that after December 31, 1983, the wage base  
33 shall be the same as that provided for in G.S. 96-9(a)(5). Collection  
34 of such advance payments shall be made as provided for the  
35 collection of contributions in G.S. 96-10.
- 36 Beginning January 1, 1978, any employer making quarterly  
37 reports of employment to the ~~Commission~~Division and if such  
38 employer is a newly electing reimbursement employer he shall pay  
39 contributions of one percent (1%) of taxable wages entered on such  
40 reports.
- 41 Any employer paying by reimbursement having been, prior to  
42 July 1, under the reimbursement method of payment for the  
43 preceding calendar year, shall continue to file quarterly reports but  
44 shall make no payments with those reports.
- 45 b. The ~~Commission~~Division shall establish a separate account for each  
46 such employer and such account shall be credited, and maintained as  
47 provided in G.S. 96-9(c)(1), except that advance payments shall be  
48 credited in full and voluntary contributions are not applicable.
- 49 ...
- 50 d. As of July 31 of each year, and prior to January 1 of the succeeding  
51 year, the ~~Commission~~Division shall determine the balance of each



1 such employer's account and shall furnish him with a statement of all  
2 charges and credits thereto.

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

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

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

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

- 31 e. The ~~Commission-Division~~ may make necessary rules and regulations  
32 with respect to coverage of a group of nonprofit organizations and  
33 with respect to the reimbursement of benefits payments by such  
34 group of nonprofit organizations.

35 ...

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

- 42 (f) (1) On and after January 1, 1978, all benefits charged to a State or local  
43 governmental employing unit shall be paid to the ~~Commission-Division~~  
44 within 25 days from the date a list of benefit charges is mailed to the State or  
45 local governmental employing agency and the appropriate account(s) shall  
46 be credited with such payment(s).

- 47 (2) In lieu of paying for benefits by reimbursement as provided in subdivision  
48 (1) hereof, any State or local governmental employing unit may elect  
49 pursuant to rules and regulations established by the ~~Commission-Division~~:

- 50 a. To pay contributions on an experience rating basis as provided in  
51 G.S. 96-9(a), (b), and (c); or,

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

- 1 c. If, after demand, the organization shall fail to pay any sums required  
2 under paragraph b. above, the Commission may revoke the  
3 organization's election for special reimbursement and any difference  
4 between the employer's account balance and one percent (1%) of its  
5 total taxable payroll shall become immediately due and payable.
- 6 d. The ~~Commission~~ Division may, in addition, exercise any of the  
7 powers granted to it in G.S. 96-10 to collect any amount due.
- 8 e. Pursuant to ~~such regulations as the Commission may adopt, rules~~  
9 adopted by the Division, the Commission shall afford any  
10 organization affected by this paragraph a hearing to determine if any  
11 increase in the organization's minimum required balance should be  
12 reduced, in whole or in part, or if any revocation of a special  
13 reimbursement election should be rescinded. If the ~~Commission,~~  
14 Division, in its sole discretion, is satisfied that the conditions giving  
15 rise to the increase or revocation have been corrected, it may reduce  
16 such increase or rescind such revocation provided that it may require  
17 as a condition of such reduction or rescission a new letter of credit up  
18 to three times the amount normally required.
- 19 ...
- 20 (i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units shall be  
21 financed in accordance with the provisions of this subsection. For the purposes of this  
22 subsection, an "Indian tribe employing unit" is an Indian tribe, a subdivision or subsidiary of an  
23 Indian tribe, or a business enterprise wholly owned by an Indian tribe.
- 24 (1) Election. –
- 25 a. An Indian tribe employing unit shall pay contributions under the  
26 provisions of this Chapter, unless it elects in accordance with this  
27 subsection to pay the ~~Commission~~ Division for the Unemployment  
28 Insurance Fund an amount equal to the amount of benefits paid that  
29 is attributable to service in the employ of the unit, to individuals for  
30 weeks of unemployment that begin within a benefit year established  
31 during the effective period of the election.
- 32 b. An Indian tribe employing unit may elect to become liable for  
33 payments in lieu of contributions for a period of not less than three  
34 calendar years by filing a written notice of its election with the  
35 ~~Commission~~ Division at least 30 days before the January 1 effective  
36 date of the election.
- 37 c. An Indian tribe employing unit that makes an election in accordance  
38 with this subsection will continue after the end of the three calendar  
39 years to be liable for payments in lieu of contributions until it files  
40 with the ~~Commission~~ Division a written notice terminating its  
41 election at least 30 days before the January 1 effective date of the  
42 termination.
- 43 d. The account of an Indian tribe employing unit that has been paying  
44 contributions under this Chapter for a period of at least three  
45 consecutive calendar years and that elects to change to a  
46 reimbursement basis shall be closed and shall not be used in any  
47 future computation of the unit's contribution rate in any manner.
- 48 e. The ~~Commission,~~ Division, in accordance with regulations it adopts,  
49 shall notify each Indian tribe employing unit of any determination of  
50 the effective date of any election it makes and of any termination of

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

1 the ~~Commission-Division~~ determines that all contributions, payments in lieu  
2 of contributions, penalties, and interest have been paid.

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

6 ...."

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

8 **"§ 96-10. Collection of contributions.**

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

22 (b) Collection. –

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

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

- 42 (2) Any representative of the ~~Employment Security Commission-Department of~~  
43 Revenue may examine and copy the county tax listings, detailed inventories,  
44 statements of assets or similar information required under General Statutes,  
45 Chapter 105, to be filed with the tax supervisor of any county in this State by  
46 any person, firm, partnership, or corporation, domestic or foreign, engaged  
47 in operating any business enterprise in such county. Any such information  
48 obtained by an agent or employee of the ~~Commission-Department of~~  
49 Revenue shall not be divulged, published, or open to public inspection other  
50 than to the ~~Commission's Division's~~ employees in the performance of their  
51 public duties. Any employee or member of the ~~Commission of the~~

1 Department of Revenue who violates any provision of this section shall be  
2 fined not less than twenty dollars (\$20.00), nor more than two hundred  
3 dollars (\$200.00), or imprisoned for not longer than 90 days, or both.

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

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

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

40 (d) Collections of Contributions upon Transfer or Cessation of Business. – The  
41 contribution or tax imposed by G.S. 96-9, and subsections thereunder, of this Chapter shall be a  
42 lien upon the assets of the business of any employer subject to the provisions hereof who shall  
43 lease, transfer or sell out his business, or shall cease to do business and such employer shall be  
44 required, by the next reporting date as prescribed by the ~~Commission~~, Department of Revenue,  
45 to file with the Commission all reports and pay all contributions due with respect to wages  
46 payable for employment up to the date of such lease, transfer, sale or cessation of the business  
47 and such employer's successor in business shall be required to withhold sufficient of the  
48 purchase money to cover the amount of said contributions due and unpaid until such time as the  
49 former owner or employer shall produce a receipt from the ~~Commission~~ Department of  
50 Revenue showing that the contributions have been paid, or a certificate that no contributions  
51 are due. If the purchaser of a business or a successor of such employer shall fail to withhold

1 purchase money or any money due to such employer in consideration of a lease or other  
2 transfer and the contributions shall be due and unpaid after the next reporting date, as above set  
3 forth, such successor shall be personally liable to the extent of the assets of the business so  
4 acquired for the payment of the contributions accrued and unpaid on account of the operation  
5 of the business by the former owner or employer.

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

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



1 days mentioned in this subsection, or within one year from the date of the refusal of said  
2 ~~Commission~~ the Department of Revenue to make refund should such refusal be made before  
3 the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not  
4 be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed  
5 as repealing, abridging or extending any other limitation or condition imposed by this Chapter.

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

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

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

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

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

1 late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay  
2 was caused by any of the following:

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

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

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

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

34 "**§ 96-11. Period, election, and termination of employer's coverage.**

35 ...  
36 (b) Prior to January 1, 1972, and except as otherwise provided in subsections (a), (c),  
37 and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter  
38 only as of the first day of January of any calendar year, if it files with the Commission prior to  
39 the first day of March of such calendar year a written application for termination of coverage  
40 and the ~~Commission~~ Department of Revenue finds that there were no 20 different weeks in the  
41 preceding calendar year (whether or not such weeks are or were consecutive) within which said  
42 employing unit employed four or more individuals in employment (not necessarily  
43 simultaneously and irrespective of whether the same individuals were employed in each such  
44 week); provided that on and after January 1, 1972, except as otherwise provided in subsections  
45 (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this  
46 Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission~~  
47 Department of Revenue prior to the first day of March of such year a written application for  
48 termination of coverage and the ~~Commission~~ Department of Revenue finds that there were no  
49 20 different weeks within the preceding calendar year (whether or not such weeks are or were  
50 consecutive) within which said employing unit employed one or more individuals in  
51 employment (not necessarily simultaneously and irrespective of whether the same individual

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

1 attempt in any manner to defeat or evade the payment of contributions becoming due under this  
2 Chapter.

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

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

29 (3) ...

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

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

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

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

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

13 **"§ 96-12. Benefits.**

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

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

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

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

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

34 ...

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

46 ...

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

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

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

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

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

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

19 ...

- 20 (a1) Definitions. – As used in this section, unless the context clearly requires otherwise .  
 21 –

22 ...

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

28 ...

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

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

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

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

49 ...

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

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

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

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

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

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

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

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

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

...."

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

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

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

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

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

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

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

...

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



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

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

25 ...

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

34 ...

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

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

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

- 1 ...  
2 (3) The Governor has issued an Executive Order directing and authorizing the  
3 ~~Employment Security Commission Division~~ to waive the waiting week for  
4 employees of the manufacturer.  
5 (4) The ~~Employment Security Commission Division~~ shall implement  
6 regulations prescribing the procedure for the waiver of the waiting period  
7 week in accordance with G.S. 96-4(b).

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

- 13 ...  
14 (g) (1) Except as herein provided, no individual shall be eligible for benefits for any  
15 week during any part of which the ~~Commission Division~~ finds that work was  
16 not available to the individual because he had been placed on a bona fide  
17 disciplinary suspension by his employer. To be bona fide, a disciplinary  
18 suspension must be based on acts or omissions which constitute fault on the  
19 part of the employee and are connected with the work but such acts or  
20 omissions need not alone be disqualifying under G.S. 96-14.

21 ...."

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

23 **"§ 96-14. Disqualification for benefits.**

24 An individual shall be disqualified for benefits:

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

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

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

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

beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

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

...  
(1e)

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

...  
(2)

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

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

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

17 (2a) For a period of not less than four nor more than 13 weeks beginning with the  
18 first day of the first week during which or after the disqualifying act occurs  
19 with respect to which week an individual files a claim for benefits if it is  
20 determined by the ~~Commission~~ Division that such individual is, at the time  
21 the claim is filed, unemployed because he was discharged for substantial  
22 fault on his part connected with his work not rising to the level of  
23 misconduct. Substantial fault is defined to include those acts or omissions of  
24 employees over which they exercised reasonable control and which violate  
25 reasonable requirements of the job but shall not include (1) minor infractions  
26 of rules unless such infractions are repeated after a warning was received by  
27 the employee, (2) inadvertent mistakes made by the employee, nor (3)  
28 failures to perform work because of insufficient skill, ability, or equipment.  
29 Upon a finding of discharge under this subsection, the individual shall be  
30 disqualified for a period of nine weeks unless, based on findings by the  
31 Commission of aggravating or mitigating circumstances, the period of  
32 disqualification is lengthened or shortened within the limits set out above.  
33 The length of the disqualification so set by the ~~Commission~~ Division shall  
34 not be disturbed by a reviewing court except upon a finding of plain error.

35 (2b) For the duration of the individual's unemployment beginning with the first  
36 day of the first week during which or after the disqualifying act occurs with  
37 respect to which week an individual files a claim for benefits if it is  
38 determined by the ~~Commission~~ Division that the individual is, at the time  
39 such claim is filed, unemployed because the individual has been discharged  
40 from employment because a license, certificate, permit, bond, or surety that  
41 is necessary for the performance of the individual's employment and that the  
42 individual is responsible to supply has been revoked, suspended, or  
43 otherwise lost to the individual, or the individual's ability to successfully  
44 apply or the individual's application therefor has been lost or denied for a  
45 cause that was within the individual's power to control, guard against, or  
46 prevent. No showing of misconduct connected with the work or substantial  
47 fault connected with the work not rising to the level of misconduct shall be  
48 required in order for an individual to be disqualified for benefits under this  
49 subdivision.

50 (2c) Discharge or employer-initiated separation of a severely disabled veteran, as  
51 defined in G.S. 96-8, for acts or omissions of the veteran that the

1 ~~Commission~~ Division determines are attributed to a disability incurred or  
2 aggravated in the line of duty during active military service, or to the  
3 veteran's absence from work to obtain care and treatment of a disability  
4 incurred or aggravated in the line of duty during active military service, shall  
5 not disqualify the veteran from receiving benefits under the substantial fault  
6 provisions of subdivision (2a) of this section for any period of time.

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

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

24 Notwithstanding any other provisions of this Chapter, no work shall be  
25 deemed suitable and benefits shall not be denied under this Chapter to any  
26 otherwise eligible individual for refusing to accept new work under any of  
27 the following conditions:

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

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

- 42 a. Such individual has failed without good cause to attend a vocational  
43 school or training program when so directed by the ~~Commission~~;  
44 Division;
- 45 b. Such individual has discontinued his training course without good  
46 cause; or
- 47 c. If the individual is separated from his training course or vocational  
48 school due to misconduct.

- 49 (5) For any week with respect to which the ~~Commission~~ Division finds that his  
50 total or partial unemployment is caused by a labor dispute in active progress  
51 on or after July 1, 1961, at the factory, establishment, or other premises at

1 which he is or was last employed or caused after such date by a labor dispute  
2 at another place within this State which is owned or operated by the same  
3 employing unit which owns or operates the factory, establishment, or other  
4 premises at which he is or was last employed and which supplies materials  
5 or services necessary to the continued and usual operation of the premises at  
6 which he is or was last employed. Provided, that an individual disqualified  
7 under the provisions of this subdivision shall continue to be disqualified  
8 thereunder after the labor dispute has ceased to be in active progress for such  
9 period of time as is reasonably necessary and required to physically resume  
10 operations in the method of operating in use at the plant, factory, or  
11 establishment of the employing unit.

12 (6) If the ~~Commission~~-Division finds he is customarily self-employed and can  
13 reasonably return to self-employment.

14 (6a) For the duration of his unemployment beginning with the first day of the  
15 first week during which or after the disqualifying act occurs with respect to  
16 which week an individual files a claim for benefits if it is determined by the  
17 ~~Commission~~-Division that the individual is, at the time the claim is filed,  
18 unemployed because the individual's ownership share of the employing  
19 entity was voluntarily sold and, at the time of the sale:

20 a. The employing entity was a corporation and the individual held five  
21 percent (5%) or more of the outstanding shares of the voting stock of  
22 the corporation;

23 b. The employing entity was a partnership, limited or general, and the  
24 individual was a limited or general partner; or

25 c. The employing entity was a proprietorship, and the individual was a  
26 proprietor.

27 ...

28 (8) For any week with respect to which he has received any sum from the  
29 employer pursuant to an order of any court, the National Labor Relations  
30 Board, any other lawfully constituted adjudicative agency, or by private  
31 agreement, consent or arbitration for loss of pay by reason of discharge.  
32 When the amount so paid by the employer is in a lump sum and covers a  
33 period of more than one week, such amount shall be allocated to the weeks  
34 in the period on such a pro rata basis as the ~~Commission~~-Division may adopt  
35 and if the amount so prorated to a particular week would, if it had been  
36 earned by the claimant during that week of unemployment, have resulted in  
37 a reduced benefit payment as provided in G.S. 96-12, the claimant shall be  
38 entitled to receive such reduced payment if the claimant was otherwise  
39 eligible.

40 Further provided, any benefits previously paid for weeks of  
41 unemployment with respect to which back pay awards, or other such  
42 compensation, are made shall constitute an overpayment of benefits and  
43 such amounts shall be deducted from the award by the employer prior to  
44 payment to the employee, and shall be transmitted promptly (or within 5  
45 days) to the ~~Commission~~-Division by the employer for application against  
46 the overpayment. Provided, however, the removal of any charges made  
47 against the employer as a result of such previously paid benefits shall be  
48 applied to the calendar year in which the overpayment is transmitted to the  
49 ~~Commission~~-Division and no attempt shall be made to relate such a credit to  
50 the period to which the award applies. Any amount of overpayment so  
51 deducted by the employer and not transmitted to the ~~Commission~~-Division

1 or the failure of an employer to deduct an overpayment shall be subject to  
2 the same procedures for collection as is provided for contributions by  
3 G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection  
4 of overpayments of U. I. benefits, and it shall be construed accordingly.

5 ...  
6 (10) Any employee disqualified for the duration of his unemployment due to the  
7 provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent  
8 disqualification removed if he meets the following three conditions:

- 9 a. Returns to work for at least five weeks and is paid cumulative wages  
10 of at least 10 times his weekly benefit amount;  
11 b. Subsequently becomes unemployed through no fault of his own; and  
12 c. Meets the availability requirements of the law.

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

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

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

26 ...  
27 (12) Notwithstanding any other provision of this Chapter, no otherwise eligible  
28 individual shall be denied benefits for any weeks if it is determined by the  
29 ~~Commission~~Division that such individual is, at the time such claim is filed,  
30 unemployed because he left work solely as a result of a lack of work caused  
31 by the bankruptcy of his employer."

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

33 **"§ 96-15. Claims for benefits.**

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

- 44 (b) (1) Initial Determination. – A representative designated by the ~~Commission~~  
45 Division shall promptly examine the claim and shall determine whether or  
46 not the claim is valid. If the claim is determined to be not valid for any  
47 reason other than lack of base period earnings, the claim shall be referred to  
48 an Adjudicator for a decision as to the issues presented. If the claim is  
49 determined to be valid, a monetary determination shall be issued showing  
50 the week with respect to when benefits shall commence, the weekly benefit  
51 amount payable, and the potential maximum duration thereof. The claimant

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

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

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

39 Provided, any interested employer shall be allowed ~~40~~ 30 days from the  
40 earlier of mailing or delivery of the notice of the filing of a claim against the  
41 employer's account to protest the claim and have the claim referred to an  
42 adjudicator for a decision on the question or issue raised. A copy of the  
43 notice of the filing shall be sent contemporaneously to the employer by  
44 telefacsimile transmission if a fax number is on file. Provided further, no  
45 question or issue may be raised or presented by the ~~Commission~~ Division as  
46 to the eligibility of a claimant under G.S. 96-13, or whether any  
47 disqualification should be imposed under G.S. 96-14, after 45 days from the  
48 first day of the first week after the question or issue occurs with respect to  
49 which week an individual filed a claim for benefits. None of the provisions  
50 of this subsection shall have the force and effect nor shall the same be  
51 construed or interested as repealing any other provisions of G.S. 96-18.



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

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

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

40 (c2) Whenever a party is notified of ~~an Adjudicator's, Appeals Referee's, or Deputy~~  
41 ~~Commissioner's~~ the Board of Review's or a hearing officer's decision by mail, G.S. 1A-1, Rule  
42 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

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

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

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

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

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

45 (h) Judicial Review. – Any decision of the ~~Commission-Division~~, in the absence of  
46 judicial review as herein provided, or in the absence of an interested party filing a request for  
47 reconsideration, shall become final 30 days after the date of notification or mailing thereof,  
48 whichever is earlier. Judicial review shall be permitted only after a party claiming to be  
49 aggrieved by the decision has exhausted his remedies before the ~~Commission-Division~~ as  
50 provided in this Chapter and has filed a petition for review in the superior court of the county in  
51 which he resides or has his principal place of business. The petition for review shall explicitly

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

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

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

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

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

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

46 "**§ 96-16. Seasonal pursuits.**

47 (a) A seasonal pursuit is one which, because of seasonal conditions making it  
48 impracticable or impossible to do otherwise, customarily carries on production operations only  
49 within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a  
50 calendar year. No pursuit shall be deemed seasonal unless and until so found by the  
51 ~~Commission~~-Provided, however, Division; except that from March 27, 1953, any successor

1 under G.S. 96-8(5)b to a seasonal pursuit shall be deemed seasonal unless such successor shall  
 2 within 120 days after the acquisition request cancellation of the determination of status of such  
 3 seasonal pursuit; provided further that this provision shall not be applicable to pending cases  
 4 nor retroactive in effect.

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

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

17 ...  
 18 (j) As used in this section:

19 ...  
 20 (5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its  
 21 active period or periods. The ~~Commission~~-Division may prescribe by  
 22 regulation the manner in which seasonal wages shall be reported.

23 ...."

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

25 **"§ 96-17. Protection of rights and benefits; attorney representation; prohibited fees;  
 26 deductions for child support obligations.**

27 ...  
 28 (b) Representation. – Any claimant or employer who is a party to any proceeding before  
 29 the ~~Commission~~-Division may be represented by (i) an attorney; or (ii) any person who is  
 30 supervised by an attorney, however, the attorney need not be present at any proceeding before  
 31 the ~~Commission~~-Division.

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

36 ...  
 37 (d) (1) Definitions. – For the purpose of this subsection and when used herein:

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

50 ...

- 1 (2) a. An individual filing a new claim for unemployment compensation  
2 shall, at the time of filing such claim, disclose whether the individual  
3 owes child support obligations, as defined under subparagraph (1)b.  
4 of this subsection. If any such individual discloses that he or she  
5 owes child support obligations and is determined by the ~~Commission~~  
6 Division to be eligible for payment of unemployment compensation,  
7 the ~~Commission-Division~~ shall notify the State or local child support  
8 enforcement agency enforcing such obligation that such individual  
9 has been determined to be eligible for payment of unemployment  
10 compensation.
- 11 b. Upon payment by the State or local child support enforcement  
12 agency of the processing fee provided for in paragraph (4) of this  
13 subsection and beginning with any payment of unemployment  
14 compensation that, except for the provisions of this subsection,  
15 would be made to the individual during the then current benefit year  
16 and more than five working days after the receipt of the processing  
17 fee by the ~~Commission, Division,~~ the ~~Commission-Division~~ shall  
18 deduct and withhold from any unemployment compensation  
19 otherwise payable to an individual who owes child support  
20 obligations:
- 21 1. The amount specified by the individual to the Commission to  
22 be deducted and withheld under this paragraph if neither  
23 subparagraph 2. nor subparagraph 3. of this paragraph is  
24 applicable; or
  - 25 2. The amount, if any, determined pursuant to an agreement  
26 submitted to the ~~Commission-Division~~ under section  
27 454(20)(B)(i) of the Social Security Act by the State or local  
28 child support enforcement agency, unless subparagraph 3. of  
29 this paragraph is applicable; or
  - 30 3. Any amount otherwise required to be so deducted and  
31 withheld from such unemployment compensation pursuant to  
32 properly served legal process, as that term is defined in  
33 section 462(e) of the Social Security Act.
- 34 c. Any amount deducted and withheld under paragraph b. of this  
35 subdivision shall be paid by the ~~Employment Security Commission~~  
36 Division to the appropriate State or local child support enforcement  
37 agency.
- 38 d. The Department of Health and Human Services and the ~~Commission~~  
39 Division are hereby authorized to enter into one or more agreements  
40 which may provide for the payment to the ~~Commission-Division~~ of  
41 the processing fees referred to in subparagraph b. and the payment to  
42 the Department of Health and Human Services of unemployment  
43 compensation benefits withheld, referred to in subparagraph c., on an  
44 open account basis. Where such an agreement has been entered into,  
45 the processing fee shall be deemed to have been made and received  
46 (for the purposes of fixing the date on which the ~~Commission~~  
47 Division will begin withholding unemployment compensation  
48 benefits) on the date a written authorization from the Department of  
49 Health and Human Services to charge its account is received by the  
50 ~~Commission-Division.~~ Such an authorization shall apply to all  
51 processing fees then or thereafter (within the then current benefit

1 year) chargeable with respect to any individual name in the  
2 authorization. Any agreement shall provide for the reimbursement to  
3 the ~~Commission~~Division of any start-up costs and the cost of  
4 providing notice to the Department of Health and Human Services of  
5 any disclosure required by subparagraph a. Such an agreement may  
6 dispense with the notice requirements of subparagraph a. by  
7 providing for a suitable substitute procedure, reasonably calculated to  
8 discover those persons owing child support obligations who are  
9 eligible for unemployment compensation payments.

10 ...

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

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

28 "**§ 96-18. Penalties.**

29 ...

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

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

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

- 50 (1) Any employing units employing more than 10 employees.

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

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

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

13 ...

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

1 to the clerk of the superior court shall immediately be docketed and  
2 indexed on the cross index of judgments, and from the date of such  
3 docketing shall constitute a preferred lien upon any property which  
4 said claimant may own in said county, with the same force and effect  
5 as a judgment rendered by the superior court. The ~~Commission~~  
6 Division shall forward a copy of said certificate to the sheriff or  
7 sheriffs of such county or counties, or to a duly authorized agent of  
8 the ~~Commission, Division,~~ and when so forwarded and in the hands  
9 of such sheriff or agent of the ~~Commission, Division,~~ shall have all  
10 the force and effect of an execution issued to such sheriff or agent of  
11 the ~~Commission~~ Division by the clerk of the superior court upon a  
12 judgment of the superior court duly docketed in said county. The  
13 ~~Commission~~ Division is further authorized and empowered to issue  
14 alias copies of said certificate or execution to the sheriff or sheriffs of  
15 such county or counties, or a duly authorized agent of the  
16 ~~Commission~~ Division in all cases in which the sheriff or duly  
17 authorized agent has returned an execution or certificate unsatisfied;  
18 when so issued and in the hands of the sheriff or duly authorized  
19 agent of the ~~Commission, Division,~~ such alias shall have all the force  
20 and effect of an alias execution issued to such sheriff or duly  
21 authorized agent of the ~~Commission~~ Division by the clerk of the  
22 superior court upon a judgment of the superior court duly docketed in  
23 said county. Provided, however, that notwithstanding any provision  
24 of this subsection, upon filing one written notice with the  
25 ~~Commission, Division,~~ the sheriff of any county shall have the sole  
26 and exclusive right to serve all executions and make all collections  
27 mentioned in this subsection and in such case, no agent of the  
28 ~~Commission~~ Division shall have the authority to serve any  
29 executions or make any collections therein in such county. A return  
30 of such execution or alias execution, shall be made to the  
31 ~~Commission,~~ Division, together with all moneys collected  
32 thereunder, and when such order, execution or alias is referred to the  
33 agent of the ~~Commission~~ Division for service, the said agent of the  
34 ~~Commission~~ Division shall be vested with all the powers of the  
35 sheriff to the extent of serving such order, execution or alias and  
36 levying or collecting thereunder. The agent of the ~~Commission~~  
37 Division to whom such order or execution is referred shall give a  
38 bond not to exceed three thousand dollars (\$3,000) approved by the  
39 ~~Commission~~ Division for the faithful performance of such duties.  
40 The liability of said agent shall be in the same manner and to the  
41 same extent as is now imposed on sheriffs in the service of  
42 execution. If any sheriff of this State or any agent of the ~~Commission~~  
43 Division who is charged with the duty of serving executions shall  
44 willfully fail, refuse or neglect to execute any order directed to him  
45 by the said ~~Commission~~ Division and within the time provided by  
46 law, the official bond of such sheriff or of such agent of the  
47 ~~Commission~~ Division shall be liable for the overpayments and costs  
48 due by the claimant. Additionally, the ~~Commission~~ Division or its  
49 designated representatives in the collection of overpayments shall  
50 have the powers enumerated in G.S. 96-10(b)(2) and (3).



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

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

1 **"§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or**  
2 **invalidation of federal acts; suspension of enforcement provisions contested.**

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

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

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

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

- 46 (1) Notify the Governor's office and provide that office with a copy of the  
47 determination or notification of the U.S. Department of Labor;
- 48 (2) Advise the Governor's office as to whether the contested portion or provision  
49 of the law would, if not enforced, so seriously hamper the operations of the  
50 agency as to make it advisable that a special session of the legislature be  
51 called;

- 1 (3) Take all reasonable steps available to obtain a reprieve from the  
2 implementation of any federal conformity failure sanctions until the State  
3 legislature has been afforded an opportunity to consider the existing  
4 conflict."

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

6 "**§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director;  
7 employees.**

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

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

28 "**§ 96-21. Duties concerning veterans and worker profiling.**

29 The duties of the ~~Employment Service Division~~ Employment Security Section include the  
30 following:

31 ...

- 32 (2) To establish and use a worker profiling system that complies with 42 U.S.C.  
33 § 503(a)(10) to identify claimants for benefits whom the ~~Division~~ Section  
34 must refer to reemployment services in accordance with that law."

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

36 "**§ 96-22. Employment of and assistance to minors.**

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

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

1 **"§ 96-24. Local offices; cooperation with United States service; financial aid from United**  
2 **States.**

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

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

12 **"§ 96-25. Acceptance and use of donations.**

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

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

19 **"§ 96-26. Cooperation of towns, townships, and counties with Division.**

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

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

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

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

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

39 **"§ 96-29. Openings listed by State agencies.**

40 Every State agency shall list with the ~~Employment Security Commission of North Carolina~~  
41 Division of Employment Security every job opening occurring within the agency which  
42 opening the agency wishes filled and which will not be filled solely by promotion or transfer  
43 from within the existing State government work force. The listing shall include a brief  
44 description of the duties and salary range and shall be filed with the ~~Commission~~ Division  
45 within 30 days after the occurrence of the opening. The State agency may not fill the job  
46 opening for at least 21 days after the listing has been filed with the ~~Commission~~ Division. The  
47 listing agency shall report to the ~~Commission~~ Division the filling of any listed opening within  
48 15 days after the opening has been filled.

49 The ~~Employment Security Commission~~ Division may act to waive the 21-day listing period  
50 for job openings in job classifications declared to be in short supply by the State Personnel

1 Commission, upon the request of a State agency, if the 21-day listing requirement for these  
2 classifications hinders the agency in providing essential services."

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

4 **"§ 96-31. Definitions.**

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

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

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

20 **"§ 96-32. Common follow-up information management system created.**

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

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

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

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

38 **"§ 96-33. State agencies required to provide information and data.**

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

45 (b) Each agency or entity required to report information and data to the ~~ESC~~ DES under  
46 this Article shall maintain true and accurate records of the information and data requested by  
47 the ~~ESC~~ DES. The records shall be open to ~~ESC~~ DES inspection and copying at reasonable  
48 times and as often as necessary. Each agency or entity shall further provide, upon request by  
49 ~~ESC~~ DES, sworn or unsworn reports with respect to persons employed or trained by the agency  
50 or entity, as deemed necessary by the ~~ESC~~ DES to carry out the purposes of this Article.  
51 Information obtained by the ~~ESC~~ DES from the agency or entity shall be held by ~~ESC~~ DES as

1 confidential and shall not be published or open to public inspection other than in a manner that  
2 protects the identity of individual persons and employers."

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

4 **"§ 96-35. Reports on common follow-up system activities.**

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

11 (b) The ~~ESC~~ DES shall report to the Governor and to the General Assembly upon the  
12 convening of each biennial session, its evaluation of and recommendations regarding job  
13 training, education, and placement programs for which data was provided to the CFS."  
14

15 **PART III. OTHER CONFORMING AMENDMENTS TO THE GENERAL STATUTES**

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

17 **"§ 7A-343.1. Distribution of copies of the appellate division reports.**

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

21	Governor, Office of the	1
22	Lieutenant Governor, Office of the	1
23	Secretary of State, Department of the	2
24	State Auditor, Department of the	1
25	Treasurer, Department of the State	1
26	Superintendent of Public Instruction	1
27	Office of the Attorney General	11
28	State Bureau of Investigation	1
29	Agriculture and Consumer Services, Department of	1
30	Labor, Department of	1
31	Insurance, Department of	1
32	Budget Bureau, Department of Administration	1
33	Property Control, Department of Administration	1
34	State Planning, Department of Administration	1
35	Environment and Natural Resources, Department of	1
36	Revenue, Department of	1
37	Health and Human Services, Department of	1
38	Juvenile Justice and Delinquency Prevention, Department of	1
39	Commission for the Blind	1
40	Transportation, Department of	1
41	Motor Vehicles, Division of	1
42	Utilities Commission	8
43	Industrial Commission	11
44	State Personnel Commission	1
45	Office of State Personnel	1
46	Office of Administrative Hearings	2
47	Community Colleges, Department of	38
48	<del>Employment Security Commission</del>	<del>4</del>
49	<u>Department of Commerce</u>	<u>1</u>
50	Commission of Correction	1
51	Parole Commission	1

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

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

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

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

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

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

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

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

26       "**§ 58-89A-120. Unemployment taxes; payroll.**

27       A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and  
28 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and  
29 collection of unemployment insurance contributions or the assignment of discrete employer  
30 numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and  
31 96-8(6). The ~~Employment Security Commission~~ Department of Commerce, Division of  
32 Employment Security (DES), shall cooperate with the Commissioner in the investigation of  
33 applicants and licensees and shall provide the Commissioner with access to all relevant records  
34 and data in the custody of the ~~Employment Security Commission~~ DES."

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

36       "(a) It shall be unlawful for any corporation to practice law or appear as an attorney for  
37 any person in any court in this State, or before any judicial body or the North Carolina  
38 Industrial Commission, Utilities Commission, or the ~~Employment Security Commission,~~  
39 Division of Employment Security, Department of Commerce, or hold itself out to the public or  
40 advertise as being entitled to practice law; and no corporation shall organize corporations, or  
41 draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice,  
42 or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through  
43 any person orally or by advertisement, letter or circular. The provisions of this section shall be  
44 in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in  
45 this section shall be construed to prohibit a banking corporation authorized and licensed to act  
46 in a fiduciary capacity from performing any clerical, accounting, financial or business acts  
47 required of it in the performance of its duties as a fiduciary or from performing ministerial and  
48 clerical acts in the preparation and filing of such tax returns as are so required, or from  
49 discussing the business and financial aspects of fiduciary relationships. Provided, however, this  
50 section shall not apply to corporations authorized to practice law under the provisions of  
51 Chapter 55B of the General Statutes of North Carolina.



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

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

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

37 "(d) The Commissioner, in order to prevent curtailment of opportunities for employment  
38 of the economically disadvantaged and the unemployed, may, by regulation, establish a wage  
39 rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect  
40 under subsection (a) which shall apply to all persons (i) who have been unemployed for at least  
41 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are,  
42 receiving Work First Family Assistance or who are receiving supplemental security benefits  
43 under Title XVI of the Social Security Act.

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

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

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

50 "(b) A listing of employment by area and industry of employers who have an assigned  
51 account number by the ~~Employment Security Commission~~Department of Commerce, Division

1 of Employment Security (DES), shall be supplied annually to the Commissioner by the  
2 ~~Employment Security Commission of this State.~~ DES. The listing of employment by area and  
3 industry shall contain at least the following: employer name; ~~Employment Security~~  
4 ~~Commission~~ DES account number; indication of whether multiple or a single report unit;  
5 number of reporting units; average employment; establishment size code; geographical area;  
6 any four-digit code; and any other information deemed necessary by the ~~Commissioner~~  
7 Division to meet federal reporting requirements."

8 "**§ 105-129. Extension of time for filing returns.**

9 A return required by this Article is due on or before the date set in this Article. A taxpayer  
10 may ask the Secretary for an extension of time to file a return under G.S. 105-263. (1939, c.  
11 158, s. 216; 1955, c. 1350, s. 17; 1959, c. 1259, s. 9; 1973, c. 476, s. 193; 1977, c. 1114, s. 6;  
12 1989 (Reg. Sess., 1990), c. 984, s. 7; 1997-300, s. 2.)"

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

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

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

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

1 average wage for all insured private employers in the State. The Department of Commerce  
2 must annually publish the wage standard for each county."

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

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

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

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

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

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

49 If a debtor owes a debt to a State agency and the net proceeds credited to the State agency  
50 for the debt exceed the amount of the debt, the State agency must send the balance to the

1 debtor. No part of the collection assistance fee retained by the Department may be returned  
2 when a debt is owed but it is less than the amount set off.

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

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

8 "**§ 105A-9. Appeals from hearings.**

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

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

17 "**§ 108A-29. Priority for employment services.**

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

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

26 ...

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

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

43 (h) An individual placed in the Job Search component of the ~~Employment Security~~  
44 ~~Commission, Division~~ or other agency providing Job Search services shall look for work and  
45 shall accept any suitable employment. If contracted, the ~~Employment Security Commission~~  
46 ~~Division~~ shall refer individuals to current job openings and shall make job development  
47 contacts for individuals. Individuals so referred shall be required to keep a record of their job  
48 search activities on a job search record form provided by the ~~Commission, Division,~~ and the  
49 ~~Employment Security Commission, Division~~ will monitor these activities. A "job search record"  
50 means a written list of dates, times, places, addresses, telephone numbers, names, and  
51 circumstances of job interviews. The Job Search component shall include at least one weekly

1 contact with the ~~Employment Security Commission~~ Division. The ~~Employment Security~~  
2 ~~Commission~~ Division shall adopt rules to accomplish this subsection.

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

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

12 ...  
13 (l) The ~~Employment Security Commission~~ Division of Employment Security shall  
14 work with the Department of Labor to develop a relationship with these private employment  
15 agencies to utilize their services and make referrals of individuals registered with the  
16 Employment Security Commission.

17 ...  
18 (n) If after evaluation of an individual the ~~Employment Security Commission~~ Division  
19 of Employment Security believes it necessary, the ~~Employment Security Commission~~ Division  
20 or the county department of social services also may refer an individual to a Job Preparedness  
21 provider. The local community college should include General Education Development, Adult  
22 Basic Education, or Human Resources Development programs that are already in existence as a  
23 part of the Job Preparedness component. Additionally, the Commission or the county  
24 department of social services may refer an individual to a literacy council. Through a  
25 Memorandum of Understanding between the Employment Security Commission, the local  
26 department of social services, and other contracted entities, a system shall be established to  
27 monitor an individual's progress through close communications with the agencies assisting the  
28 individual. The ~~Employment Security Commission~~ Division of Employment Security or Job  
29 Preparedness provider shall adopt rules to accomplish this subsection.

30 ...  
31 (p) The ~~Employment Security Commission~~ Division shall expand its Labor Market  
32 Information System. The expansion shall at least include: statistical information on  
33 unemployment rates and other labor trends by county; and publications dealing with licensing  
34 requirements, economic development, and career projections, and information technology  
35 systems which can be used to track participants through the employment and training process.

36 ...."

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

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

40 (1) The ~~Employment Security Commission~~ Division of Employment Security  
41 for the purpose of administering employment security programs."

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

43 **"§ 110-136.2. Use of unemployment compensation benefits for child support.**

44 ...  
45 (b) Upon notification of a voluntary assignment by the Department of Health and  
46 Human Services, the ~~Employment Security Commission~~ Division of Employment Security  
47 shall deduct and withhold the amount assigned by the responsible parent as provided in  
48 G.S. 96-17.

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

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

5 ...

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

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

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

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

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

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

33 "**§ 135-16. Employees transferred to North Carolina State Employment Service by act of**  
34 **Congress.**

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

1 would have been paid for such period for members or employees who pay the accumulated  
2 contributions provided in this section.

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

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

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

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

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

23 **"§ 143B-181. Governor's Advisory Council on Aging – members; selection; quorum;**  
24 **compensation.**

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



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

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

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

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

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

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

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

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

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

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

38 ...

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

40 ...."

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

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

43 ...

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

47 ...."

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

49 **"§ 147-86.1. Pool account for local government unemployment compensation.**

50 (a) The State Treasurer is authorized to establish a pool account, in accordance with  
51 rules and regulations of the ~~Employment Security Commission,~~Division of Employment

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

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

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

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

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

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

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

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

42 **"§ 165-10. Transfer of veterans' activities.**

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

48  
49 **PART IV. REPORTING; OTHER MATTERS**

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

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

8 **PART V.       AUTHORITY OF THE REVISOR**

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

17 **PART VI.       EFFECTIVE DATE**

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