

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**SENATE DRS45002-LR-8C (11/24)**

Short Title: Create Employment Safety & Security Comm.

(Public)

Sponsors: Senator Berger of Franklin.

Referred to:

A BILL TO BE ENTITLED

AN ACT ENHANCING WORKER SAFETY IN NORTH CAROLINA BY CREATING THE EMPLOYMENT SAFETY AND SECURITY COMMISSION AND BY TRANSFERRING TO THAT COMMISSION THE FUNCTIONS OF THE OCCUPATIONAL SAFETY AND HEALTH DIVISION OF THE DEPARTMENT OF LABOR AND CERTAIN OTHER STATUTORY POWERS AND DUTIES OF THE COMMISSIONER OF LABOR RELATING TO EMPLOYEE SAFETY.

The General Assembly of North Carolina enacts:

**PART I. TRANSFERS AND GENERAL PROVISIONS**

**SECTION 1.(a)** Transfers of Agencies, Powers, Duties. – The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State agencies and subunits listed in this subsection are transferred from those entities to the Employment Safety and Security Commission, Department of Commerce, created by this act with all of the elements of a Type II transfer as defined by G.S. 143A-6:

- (1) Office of Occupational Safety and Health, Department of Labor.
- (2) North Carolina Occupational Safety and Health Review Commission, Department of Labor.
- (3) State Advisory Council on Occupational Safety and Health, Department of Labor.
- (4) Agricultural Safety and Health Bureau, Department of Labor.

**SECTION 1.(b)** Recodifications. – Articles 16, 18, 19, 22, and 23 of Chapter 95 of the General Statutes are recodified as Articles 5, 6, 7, 8, and 9, respectively, of Chapter 96 of the General Statutes, except that the Revisor of Statutes may assign different numbering as necessary. The Revisor of Statutes may delete any reference in those articles to the Department of Labor, or any derivative thereof, and to substitute references to the Employment Safety and Security Commission wherever conforming changes are necessary.

The Revisor of Statutes shall make conforming changes to Chapter 96 of the General Statutes to effectuate the renaming of the Employment Security Commission, and derivatives thereof, to the Employment Safety and Security Commission, and derivatives thereof.

In addition, the Revisor of Statutes may substitute the name Employment Safety and Security Commission, the title Chief Deputy Commissioner, or a derivative of either, and delete



1 reference to the Department of Labor or the Commissioner of Labor in any section of the  
2 General Statutes where the conforming change is required by virtue of this act.

3 **SECTION 1.(c)** Continuation of Duties. – Any previous assignment of duties of a  
4 quasi-legislative and quasi-judicial nature by the Governor or General Assembly shall have  
5 continued validity with the transfer under this act of any affected commission, board, division,  
6 office, or bureau. Except as otherwise specifically provided in this act, each enumerated  
7 commission, board, office, bureau, or other subunit of State government transferred to Chapter  
8 96 of the General Statutes as enacted by this act is a continuation of the former entity for  
9 purposes of succession to all the rights, powers, duties, and obligations of the former. Where  
10 the former entities are referred to by law, contract, or other document in their former name, that  
11 reference shall apply to the commission, board, division, office, bureau, or other subunit within  
12 the Employment Safety and Security Commission exercising the functions of the former entity  
13 named in the document.

14 **SECTION 1.(d)** No action or proceeding pending on January 1, 2010, brought by  
15 or against any State office, commission, council, or other governmental subunit whose  
16 functions, powers, and duties are transferred by this act to the Employment Safety and Security  
17 Commission shall be affected by any provision of this act, but the same may be prosecuted or  
18 defended in the name of the Employment Safety and Security Commission. In these actions and  
19 proceedings, the Employment Safety and Security Commission shall be substituted as a party  
20 upon proper application to the courts or other administrative or quasi-judicial bodies.

21 Any business or other matter undertaken or commanded by any State program or  
22 office or contract transferred by this act to the Employment Safety and Security Commission,  
23 or by the commissioners or directors thereof, pertaining to or connected with the functions,  
24 powers, obligations, and duties set forth herein, which is pending on the date this act becomes  
25 effective, may be conducted and completed by the Employment Safety and Security  
26 Commission in the same manner and under the same terms and conditions and with the same  
27 effect as if conducted and completed by the original program, office, or commissioners, or  
28 directors thereof.

## 29 30 **PART II. MINE SAFETY**

31 **SECTION 2.** G.S. 74-24.1 reads as rewritten:

### 32 **"§ 74-24.1. Short title and legislative purpose.**

33 (a) This Article shall be known as the Mine Safety and Health Act of North Carolina.

34 (b) Legislative findings and purpose:

35 (1) The General Assembly finds that the burden of operators and miners of this  
36 State's mines resulting from personal injuries and illnesses arising out of  
37 work situations is substantial; that the prevention of these injuries and  
38 illnesses is an important objective of the government of this State; that the  
39 greatest hope in attaining this objective lies in programs of research,  
40 engineering, education, and enforcement, and in earnest cooperation of the  
41 federal and state governments, operators, and miners.

42 (2) The General Assembly of North Carolina declares it to be its purpose and  
43 policy through the exercise of its powers to assure so far as possible every  
44 worker in North Carolina's mines safe and healthful working conditions and  
45 to preserve our human resources:

46 a. By encouraging operators and miners in their effort to reduce the  
47 number of occupational safety and health hazards in mines and to  
48 stimulate and assist operators and miners to institute new programs  
49 and to perfect existing programs for providing safe and healthful  
50 working conditions through technical assistance and consultation;

- 1                   b.     By recognizing that operators and miners have separate but  
2                   interdependent responsibilities and rights with respect to achieving  
3                   safe and healthful working conditions;
- 4                   c.     By authorizing the ~~Commissioner~~Employment Safety and Security  
5                   Commission to develop occupational safety and health standards  
6                   applicable to mines giving consideration to the needs of operators  
7                   and miners and to adopt standards promulgated from time to time by  
8                   the federal government;
- 9                   d.     By providing occupational health criteria which will assure insofar as  
10                  practicable that no miner will suffer diminished health, functional  
11                  capacity, or life expectancy as a result of his work experience in a  
12                  mine;
- 13                  e.     By providing education and training programs to increase the number  
14                  and competence of personnel engaged in the field of occupational  
15                  safety and health;
- 16                  f.     By providing an effective enforcement program which shall include a  
17                  prohibition against giving advance notice of a mine inspection;
- 18                  g.     By providing for appropriate reporting procedures with respect to  
19                  occupational safety and health which will help achieve the objectives  
20                  of this Article and accurately describe the nature of the occupational  
21                  safety and health problems in mines;
- 22                  h.     By providing for research and technical assistance in the field of  
23                  occupational safety and health in mines and by developing  
24                  innovative methods, techniques, and approaches for dealing with  
25                  occupational safety and health problems in mines; and
- 26                  i.     By authorizing the ~~Commissioner~~Employment Safety and Security  
27                  Commission to enter into agreements and contracts with public and  
28                  private agencies, including agencies of the United States government,  
29                  organizations, and individuals in order to carry out the ends and  
30                  purposes of this Article.

31           (c)     The General Assembly of North Carolina appoints the North Carolina ~~Department~~  
32           of ~~Labor~~Employment Safety and Security Commission as the designated agency to administer  
33           the Mine Safety and Health Act of North Carolina."  
34

### 35 **PART III. OCCUPATIONAL SAFETY AND HEALTH**

#### 36 **SECTION 3.** G.S. 95-126 reads as rewritten:

#### 37 **"§ 95-126. Short title and legislative purpose.**

38           (a)     This Article shall be known as the "Occupational Safety and Health Act of North  
39           Carolina" and also may be referred to by abbreviations as "OSHANC."

40           (b)     Legislative findings and purpose:

41           (1)     The General Assembly finds that the burden of employers and employees of  
42           this State resulting from personal injuries and illnesses arising out of work  
43           situations is substantial; that the prevention of these injuries and illnesses is  
44           an important objective of the government of this State; that the greatest hope  
45           of attaining this objective lies in programs of research, education and  
46           enforcement, and in the earnest cooperation of the federal and State  
47           governments, employers and employees.

48           (2)     The General Assembly of North Carolina declares it to be its purpose and  
49           policy through the exercise of its powers to ensure so far as possible every  
50           working man and woman in the State of North Carolina safe and healthful  
51           working conditions and to preserve our human resources:

- 1 a. By encouraging employers and employees in their effort to reduce  
2 the number of occupational safety and health hazards at the place of  
3 employment, and to stimulate employers and employees to institute  
4 new and to perfect existing programs for providing safe and healthful  
5 working conditions;
- 6 b. By providing that employers and employees have separate but  
7 dependent responsibilities and rights with respect to achieving safe  
8 and healthful working conditions;
- 9 c. By authorizing the ~~Commissioner~~ Employment Safety and Security  
10 Commission to develop occupational safety and health standards  
11 applicable to business giving consideration to the needs of employers  
12 and employees and to adopt standards promulgated from time to time  
13 by the Secretary of Labor under the Occupational Safety and Health  
14 Act of 1970, and by creating a safety and health review commission  
15 for carrying out adjudicatory functions under this Article;
- 16 d. By building upon advances already made through employer and  
17 employee initiative for providing safe and healthful working  
18 conditions;
- 19 e. By providing occupational health criteria which will assure insofar as  
20 practicable that no employee will suffer diminished health, functional  
21 capacity, or life expectancy as a result of his work experience;
- 22 f. By providing for training programs to increase the number and  
23 competence of personnel engaged in the field of occupational safety  
24 and health;
- 25 g. By providing an effective enforcement program which shall include a  
26 prohibition against giving advance notice of an inspection and  
27 sanctions for any individual violating this prohibition;
- 28 h. By providing for appropriate reporting procedures with respect to  
29 occupational safety and health which procedures will help achieve  
30 the objectives of this Article and accurately describe the nature of the  
31 occupational safety and health problem;
- 32 i. By encouraging joint employer-employee efforts to reduce injuries  
33 and diseases arising out of employment;
- 34 j. By providing for research in the field of occupational safety and  
35 health, by developing innovative methods, techniques, and  
36 approaches for dealing with occupational safety and health problems;
- 37 k. By exploring ways to discover latent diseases, establishing causal  
38 connections between diseases and work in environmental conditions,  
39 and conducting other research relating to health problems, in  
40 recognition of the fact that occupational health standards present  
41 problems often different from those involved in occupational safety;
- 42 l. By authorizing the ~~Commissioner~~ Employment Safety and Security  
43 Commission to enter into contracts with the Department of Health  
44 and Human Services, or any other State or local units, to the end the  
45 Commissioner and the Department of Health and Human Services  
46 and other State or local units may fully cooperate and carry out the  
47 ends and purposes of this Article.
- 48 m. The General Assembly of North Carolina appoints and elects the  
49 North Carolina ~~Department of Labor~~ Employment Safety and  
50 Security Commission as the designated agency to administer the  
51 Occupational Safety and Health Act of North Carolina."

**SECTION 4.** G.S. 95-127 reads as rewritten:**"§ 95-127. Definitions.**

In this Article, unless the context otherwise requires:

- (1) The term "Advisory Council" shall mean the Advisory Council or body established under this Article.
- (2) The term "Commission" means the North Carolina Occupational Safety and Health Review Commission established under this Article.
- (3) The term "classified service" means a position included in the State Merit System of Personnel Administration subject to the laws, rules and regulations of the State Personnel Board as administered by the State Personnel Director and as set forth in Chapter 126 of the General Statutes.
- (4) The term "Commissioner" means the ~~Commissioner of Labor of North Carolina~~ Chief Deputy Commissioner of the Employment Safety and Security Commission.
- (5) The term "days" shall mean a calendar day unless otherwise noted.
- ~~(6) The term "Department" means the Department of Labor of North Carolina.~~
- (7) The term "Chief Deputy Commissioner" means the Chief Deputy Commissioner of the North Carolina Department of Labor, who is appointed by the Commissioner to aid and assist the Commissioner in the performance of his duties. Employment Safety and Security Commission. The Chief Deputy Commissioner shall exercise such the power and authority as delegated to him—the Chief Deputy Commissioner by the Commissioner. Employment Safety and Security Commission.
- (8) The term "Director" means the officer or agent appointed by the ~~Commissioner of Labor~~ Chief Deputy Commissioner of the Employment Safety and Security Commission for the purpose of assisting in the administration of the Occupational Safety and Health Act of North Carolina.
- (9) The term "employee" means an employee of an employer who is employed in a business or other capacity of his employer, including any and all business units and agencies owned and/or controlled by the employer.
- (10) The term "employer" means a person engaged in a business who has employees, including any state or political subdivision of a state, but does not include the employment of domestic workers employed in the place of residence of his or her employer.
- (11) The term "established federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any act of Congress in force on the date of enactment of this Article, and adopted by the Secretary of Labor under the Occupational Safety and Health Act of 1970.
- (12) The term "federal act," as referred to in this Article, means the Occupational Safety and Health Act of 1970 (Public Law 91-596, 91st Congress, Act of December 29, 1970, 84 Stat. 1950).
- (13) The term "imminent danger" means any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death, or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article.
- (14) The term "issue" means an industrial, occupational or hazard grouping.
- (15) The term "occupational safety and health standards" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, safety devices, operations or processes reasonably necessary and

1 appropriate to provide safe and healthful employment and places of  
2 employment, and shall include all occupational safety and health standards  
3 adopted and promulgated by the Secretary which also may be and are  
4 adopted by the State of North Carolina under the provisions of this Article.  
5 This term includes but is not limited to interim federal standards, consensus  
6 standards, any proprietary standards or permanent standards, as well as  
7 temporary emergency standards which may be adopted by the Secretary,  
8 promulgated as provided by the Occupational Safety and Health Act of  
9 1970, and which standards or regulations are published in the Code of  
10 Federal Regulations or otherwise properly promulgated under the federal act  
11 or any appropriate federal agencies.

12 (16) The term "person" means one or more individuals, partnerships,  
13 associations, corporations, business trusts, legal representatives.

14 (17) The term "Secretary" means the United States Secretary of Labor.

15 (18) A "serious violation" shall be deemed to exist in a place of employment if  
16 there is a substantial probability that death or serious physical harm could  
17 result from a condition which exists, or from one or more practices, means,  
18 methods, operations, or processes which have been adopted or are in use at  
19 such place of employment, unless the employer did not know, and could not,  
20 with the exercise of reasonable diligence, know of the presence of the  
21 violation.

22 (19) The term "State" means the State of North Carolina."

23 **SECTION 5.** G.S. 95-129(3) reads as rewritten:

24 "(3) Each employer shall refrain from any unreasonable restraint on the right of  
25 the ~~Commissioner~~ Employment Safety and Security Commission or  
26 Director, or their lawfully appointed agents, to inspect the employer's place  
27 of business. Each employer shall assist the ~~Commissioner~~, Employment  
28 Safety and Security Commission, the Director or the lawful agents of either  
29 or both of them, in the performance of their inspection duties by supplying  
30 or by making available information, any necessary personnel or necessary  
31 inspection aides;"

32 **SECTION 6.** G.S. 95-131 reads as rewritten:

33 **"§ 95-131. Development and promulgation of standards; adoption of federal standards**  
34 **and regulations.**

35 (a) All occupational safety and health standards promulgated under the federal act by  
36 the Secretary, and any modifications, revision, amendments or revocations in accordance with  
37 the authority conferred by the federal act or any other federal act or agency relating to safety  
38 and health and adopted by the Secretary, shall be adopted as the rules of the ~~Commissioner of~~  
39 ~~this State~~ Employment Safety and Security Commission unless the ~~Commissioner that~~  
40 Commission decides to adopt an alternative State rule as effective as the federal requirement  
41 and providing safe and healthful employment in places of employment as required by the  
42 federal act and standards and regulations heretofore referred to and as provided by the  
43 Occupational Safety and Health Act of 1970. Chapter 150B of the General Statutes governs the  
44 adoption of rules by the Commissioner.

45 (b), (c) Repealed by Session Laws 1991, c. 418, s. 8.

46 (d) Rules adopted under this section shall provide insofar as possible the highest degree  
47 of safety and health protection for employees; other considerations shall be the latest available  
48 scientific data in the field, the feasibility of the standard, and experience gained under this and  
49 other health and safety laws. Whenever practical the standards established in a rule shall be  
50 expressed in terms of objective criteria and of the performance desired. In establishing  
51 standards dealing with toxic materials or harmful physical agents, the ~~Commissioner~~,

1 Employment Safety and Security Commission, after consultation and recommendations of the  
2 Department of Health and Human Services, shall set a standard which most adequately assures,  
3 to the extent possible, on the basis of the most available evidence that no employee will suffer  
4 material impairment of health or functional capacity even if ~~such~~the employee has regular  
5 exposure to the hazard dealt with by such standard for the period of ~~his~~the employee's working  
6 life.

7 (e) The ~~Commissioner~~Employment Safety and Security Commission may not adopt  
8 State standards, for products distributed or used in interstate commerce, which are different  
9 from federal standards for such products unless the adoption of such State standard, or  
10 standards, is required by compelling local conditions and does not unduly burden interstate  
11 commerce.

12 (f) Repealed by Session Laws 1991, c. 418, s. 8.

13 (g) Any rule, regulation, scope, or standard for agricultural employers adopted or  
14 promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope, or  
15 standard is repealed effective September 1, 1989, unless readopted pursuant to Chapter 150B of  
16 the General Statutes."

17 **SECTION 7.** G.S. 95-132 reads as rewritten:

18 "**§ 95-132. Variances.**

19 (a) Temporary Variances. –

20 (1) The ~~Commissioner~~Employment Safety and Security Commission may upon  
21 written application by an employer issue an order granting such employer a  
22 temporary variance from standards adopted by this Article or promulgated  
23 by the ~~Commissioner~~Employment Safety and Security Commission under  
24 this Article. Any such order shall prescribe the practices, means, methods,  
25 operations and processes which the employer must adopt or use while the  
26 variance is in effect and state in detail a program for coming into compliance  
27 with the standard.

28 (2) An application for a temporary variance shall contain all information  
29 required as enumerated in 29 C.F.R. 1905.10(b) which is hereby  
30 incorporated by reference, as if herein fully set out.

31 (3) Upon receipt of an application for an order granting a temporary variance,  
32 the ~~Commissioner to whom such application is addressed~~Employment  
33 Safety and Security Commission may issue an interim order granting ~~such~~  
34 the temporary variance, for the purpose of permitting time for an orderly  
35 consideration of ~~such~~the application. No such interim order may be  
36 effective for longer than 180 days.

37 (4) ~~Such a~~A temporary variance may be granted only after notice to employees  
38 and interested parties and opportunity for hearing. The temporary variance  
39 may be for a period of no longer than required to achieve compliance or one  
40 year, whichever is shorter, and may be renewed only once. Application for  
41 renewal of a variance must be filed in accordance with provisions in the  
42 initial grant of the temporary variance.

43 (5) An order granting a temporary variance shall be issued only if the employer  
44 ~~establishes~~establishes:

- 45 a. (i) That ~~he~~the employer is unable to comply with the standard by the  
46 effective date because of unavailability of professional or technical  
47 personnel or materials and equipment required or necessary  
48 construction or alteration of facilities or technology, (ii) that all  
49 available steps have been taken to safeguard ~~his~~employees against  
50 the hazards covered by the standard, and (iii) that ~~he~~the employer

- 1 has an effective program for coming into compliance with the  
2 standard as quickly as practicable, or  
3 b. That ~~he~~the employer is engaged in an experimental program as  
4 described in subsection (c) of this section as hereinafter stated.
- 5 (b) Permanent Variances. –  
6 (1) Any affected employer may apply to the ~~Commissioner~~Employment Safety  
7 and Security Commission for a rule or order for a permanent variance from a  
8 standard promulgated under this section. Affected employees shall be given  
9 notice of each such application and an opportunity to participate in a  
10 hearing. The ~~Commissioner~~Employment Safety and Security Commission  
11 shall issue such rule or order if ~~he~~it determines on the record, after  
12 opportunity for an inspection where appropriate and a hearing, that the  
13 proponent of the variance has demonstrated by a preponderance of the  
14 evidence that the conditions, practices, means, methods, operations, or  
15 processes used or proposed to be used by an employer will provide  
16 employment and places of employment to his employees which are as safe  
17 and healthful as those which would prevail if he complied with the standard.  
18 (2) The rule or order so issued shall prescribe the conditions the employer must  
19 maintain, and the practices, means, methods, operations, and processes  
20 which he must adopt and utilize to the extent they differ from the standard in  
21 question.  
22 (3) ~~Such a~~The rule or order may be modified or revoked upon application by an  
23 employer, employees, or by the ~~Commissioner~~Employment Safety and  
24 Security Commission on ~~his~~its own motion, in the manner prescribed for its  
25 issuance under this subsection at any time after six months from its issuance.
- 26 (c) Experimental Variances. – The ~~Commissioner~~is authorized toEmployment Safety  
27 and Security Commission may grant a variance from any standard or portion thereof whenever  
28 ~~he~~it determines that ~~such~~the variance is necessary to permit an employer to participate in an  
29 experiment approved by ~~him~~the Employment Safety and Security Commission designed to  
30 demonstrate or validate new and improved techniques to safeguard the health or safety of  
31 workers."

32 **SECTION 8.** G.S. 95-133 reads as rewritten:

33 "**§ 95-133. Office of Director of Occupational Safety and Health; powers and duties of the**  
34 **Director.**

35 (a) There is hereby created and established in the ~~North Carolina Department of Labor~~  
36 Employment Safety and Security Commission a division to be known as the Occupational  
37 Safety and Health Division. The Chief Deputy Commissioner shall appoint a Director to  
38 administer this division who shall be subject to the direction and supervision of the Chief  
39 Deputy Commissioner. The Director shall carry out the responsibilities of the State of North  
40 Carolina as prescribed under the Occupational Safety and Health Act of 1970, and any  
41 subsequent federal laws or regulations relating to occupational safety and health, and this  
42 Article, as written, revised or amended by legislative enactment and as delegated or authorized  
43 by the ~~Commissioner~~Employment Safety and Security Commission. The ~~Commissioner~~  
44 Employment Safety and Security Commission shall ~~make and promulgate such~~adopt rules,  
45 amendments, or revisions in rules, as ~~he~~it may deem advisable for the administration of the  
46 office, ~~he~~it shall also accept and use the services, facilities, and personnel of any agency of the  
47 State or of any subdivision of State government, either as a free service or by reimbursement.  
48 The Director shall devote full time to ~~his~~the duties of that office and shall not hold any other  
49 office. The Director, subject to the approval of the Chief Deputy Commissioner, shall select a  
50 professional staff of qualified and competent employees to assist in the statewide

1 administration of the Article. All of the employees referred to herein shall be under the  
2 classified service, as herein defined in G.S. 95-127, subdivision (3).

3 (b) Subject to the general supervision of the ~~Commissioner~~ Employment Safety and  
4 Security Commission and the Chief Deputy Commissioner, the Director shall be responsible  
5 for the administration and enforcement of all laws, rules and regulations which it is the duty of  
6 the Division to administer and enforce. The Director shall have the power, jurisdiction and  
7 authority to:

- 8 (1) Uniformly superintend, enforce and administer applicable occupational  
9 safety and health laws of the State of North Carolina;
- 10 (2) Make or cause to be made all necessary inspections, analyses and research  
11 for the purpose of seeing that all laws and rules and regulations which the  
12 office has the duty, power and authority to enforce are promptly and  
13 effectively carried out;
- 14 (3) Make all necessary investigations, develop information and reports upon  
15 conditions of employee safety and health, and upon all matters relating to the  
16 enforcement of this Article and all lawful regulations issued thereunder;
- 17 (4) Report to the Federal Occupational Safety and Health Administration any  
18 information which it may require;
- 19 (5) Recommend to the ~~Commissioner~~ such Employment Safety and Security  
20 Commission rules, regulations, standards, or changes in rules, regulations  
21 and standards which the Director deems advisable for the prevention of  
22 accidents, occupational hazards or the prevention of industrial or  
23 occupational diseases;
- 24 (6) Recommend to the ~~Commissioner~~ Employment Safety and Security  
25 Commission that ~~he~~ it institute proceedings to ~~remove from his or her~~  
26 ~~position~~ terminate from employment any employee of the Office who accepts  
27 any favor, privilege, money, object of value, or property of any kind  
28 whatsoever or who shall give prior notice of a compliance inspection of a  
29 work place unless authorized under the provisions of this Article;
- 30 (7) Employ experts, consultants or organizations for work related to the  
31 occupational safety and health program of the Division and compensate  
32 same with the approval of the ~~Commissioner~~ Employment Safety and  
33 Security Commission;
- 34 (8) Institute hearings, investigations, request the issuance of citations and  
35 propose such penalties as he may in his judgment consider necessary to carry  
36 out the provisions of this Article;
- 37 (9) The ~~Commissioner~~ Employment Safety and Security Commission shall have  
38 the power and authority to issue all types of notices, citations, cease and  
39 desist orders, or any other pleading, form or notice necessary to enforce  
40 compliance with this Article as hereinafter set forth. The ~~Commissioner~~ is  
41 ~~also empowered and authorized to~~ Employment Safety and Security  
42 Commission may apply to the courts of the State having jurisdiction for  
43 orders or injunctions restraining unlawful acts and practices prohibited by  
44 this Article or not in compliance with this Article and to apply for mandatory  
45 injunctions to compel enforcement of the Article, and the Commissioner is  
46 authorized, and further authorized by and through his agents, to institute  
47 criminal actions or proceedings for such violations of the Article as are  
48 subject to criminal penalties. The Director shall recommend to the  
49 ~~Commissioner~~ Employment Safety and Security Commission the imposition  
50 and amount of civil penalties provided by this Article, and the ~~Commissioner~~  
51 Employment Safety and Security Commission may institute such

- 1 proceedings as necessary for the enforcement and payment of ~~such~~ civil  
2 penalties subject to ~~such~~ review of the Commission as hereinafter set forth.
- 3 (10) The Director may recommend to the ~~Commissioner~~ Employment Safety and  
4 Security Commission that any person, firm, corporation or witness be cited  
5 for contempt or for punishment as of contempt, and the ~~Commissioner is~~  
6 ~~authorized to~~ Employment Safety and Security Commission may enter any  
7 order of contempt or as of contempt as ~~he~~ it may deem proper and necessary,  
8 and any hearing examiner may recommend to the ~~Commissioner~~  
9 Employment Safety and Security Commission that such order or citation for  
10 contempt be made.
- 11 (11) The Chief Deputy Commissioner or the Director, or their authorized agents,  
12 shall have the power and authority to issue subpoenas for witnesses and for  
13 the production of any and all papers and documents necessary for any  
14 hearing or other proceeding and to require the same to be served by the  
15 process officers of the State. The Chief Deputy Commissioner and the  
16 Director may administer any and all oaths that are necessary in the  
17 enforcement of this Article and may certify as to the authenticity of all  
18 records, papers, documents and transcripts under the seal of the ~~Department~~  
19 ~~of Labor~~ Employment Safety and Security Commission.
- 20 (12) All orders, citations, cease and desist orders, stop orders, sanctions and  
21 contempt orders, civil penalties and the proceedings thereon shall be subject  
22 to review by the Commission as hereinafter provided, including all  
23 assessments for civil penalties."

24 **SECTION 9.** G.S. 95-134 reads as rewritten:

25 **"§ 95-134. Advisory Council.**

26 (a) There is hereby established a State Advisory Council on Occupational Safety and Health  
27 consisting of 11 members, appointed by the ~~Commissioner~~, Employment Safety and Security  
28 Commission, composed of three representatives from management, three representatives from  
29 labor, four representatives of the public sector with knowledge of occupational safety and  
30 occupational health professions and one representative of the public sector with knowledge of  
31 migrant labor. The ~~Commissioner~~ Employment Safety and Security Commission shall  
32 designate one of the members from the public sector as chairman and all members of the State  
33 Advisory Council shall be selected insofar as possible upon the basis of their experience and  
34 competence in the field of occupational safety and health.

35 (b) The Council shall advise, consult with, and make recommendations to the  
36 ~~Commissioner~~ Employment Safety and Security Commission on matters relating to the  
37 administration of this Article. The Council shall hold no fewer than two meetings during each  
38 calendar year. All meetings of the Advisory Council shall be open to the public and a transcript  
39 shall be kept and made available for public inspection.

40 (c) The Director shall furnish to the Advisory Council such secretarial, clerical and other  
41 services as ~~he~~ the Director deems necessary to conduct the business of the Advisory Council.  
42 The members of the Advisory Council shall be compensated for reasonable expenses incurred,  
43 including necessary time spent in traveling to and from their place of residence within the State  
44 to the place of meeting, and mileage and subsistence as allowed to State officials. The members  
45 of the Advisory Council shall be compensated in accordance with Chapter 138 of the General  
46 Statutes.

47 (d) In addition to its other duties, the Advisory Council shall assist the ~~Commissioner~~  
48 Employment Safety and Security Commission in formulating and setting standards under the  
49 provisions of this Article. For this purpose the ~~Commissioner~~ Employment Safety and Security  
50 Commission may appoint persons qualified by experience and affiliation to present the  
51 viewpoint of the employers involved, persons similarly qualified to present the viewpoint of the

1 workers involved, and some persons to represent the health and safety agencies of the State.  
2 The Commissioner for this purpose may include representatives or professional organizations  
3 of technicians or professionals specializing in occupational safety or health. Such persons  
4 appointed for temporary purposes may be paid such per diem and expenses of attending  
5 meetings as provided in Chapter 138 of the General Statutes."

6 **SECTION 10.** G.S. 95-135 reads as rewritten:

7 **"§ 95-135. North Carolina Occupational Safety and Health Review Commission.**

8 (a) The North Carolina Occupational Safety and Health Review Commission is hereby  
9 established. The Commission shall be composed of three members from among persons who,  
10 by reason of training, education or experience, are qualified to carry out the functions of the  
11 Commission under this Article. The Governor shall appoint the members of the Commission  
12 and name one of the members as chairman of the Commission. The terms of the members of  
13 the Commission shall be six years except that the members of the Commission first taking  
14 office shall serve, as designated by the Governor at the time of appointment, one for a term of  
15 two years, one for a term of four years, and the member of the Commission designated as  
16 chairman shall serve for a term of six years. Any vacancy caused by the death, resignation, or  
17 removal of a member prior to the expiration of the term for which he was appointed shall be  
18 filled by the Governor for the remainder of the unexpired term. The Governor shall fill all  
19 vacancies occurring by reason of the expiration of the term of any members of the Commission.

20 (a1) The Commission shall report quarterly to the Employment Safety and Security  
21 Commission on the status of North Carolina Occupational Safety and Health Act enforcement.  
22 The report shall include any recommendations that would enhance the safety of the State's  
23 workforce.

24 (b) The Commission shall hear and issue decisions on appeals entered from citations  
25 and abatement periods and from all types of penalties. Appeals from orders of the Director  
26 dealing with conditions or practices that constitute imminent danger shall not be stayed by the  
27 Commission until after full and adequate hearing. The Commission in the discharge of its  
28 duties under this Article is authorized and empowered to administer oaths and affirmations and  
29 institute motions, cause the taking of depositions, interrogatories, certify to official acts, and  
30 issue subpoenas to compel the attendance of witnesses and the production of books, papers,  
31 correspondence, memoranda, and other records deemed necessary as evidence in connection  
32 with any appeal or proceeding for review before the Commission.

33 (c) The Commission shall meet at least once each calendar quarter but it may hold call  
34 meetings or hearings upon at least three days' notice to each member by the chairman and at  
35 such time and place as the chairman may fix. The chairman shall be responsible on behalf of  
36 the Commission for the administrative operations of the Commission and shall appoint such  
37 hearing examiners and other employees as he deems necessary to assist in the performance of  
38 the Commission's functions and fix the compensation of such employees with the approval of  
39 the Governor. The assignment and removal of hearing examiners shall be made by the  
40 Commission, and any hearing examiner may be removed for misfeasance, malfeasance,  
41 misconduct, immoral conduct, incompetency, the commission of any crime, or for any other  
42 good and adequate reason as found by the Commission. The Commission shall give notice to  
43 such hearing examiner, along with written allegations as to the charges against him, and the  
44 same shall be heard by the Commission, and its decision shall be final. The compensation of  
45 the members of the Commission shall be on a per diem basis and shall be fixed by the  
46 Governor. The chairman of the Commission may be paid a higher rate of compensation than  
47 the other two members of the Commission. For the purpose of carrying out its duties and  
48 functions under this Article, two members of the Commission shall constitute a quorum and  
49 official action can be taken only on the affirmative vote of at least two members of the  
50 Commission. On matters properly before the Commission the chairman may issue temporary  
51 orders, subpoenas, and other temporary types of orders subject to the subsequent review of the

1 Commission. The issuance of subpoenas, orders to take depositions, orders requiring  
2 interrogatories and other procedural matters of evidence issued by the chairman shall not be  
3 subject to review.

4 (d) Every official act of the Commission shall be entered of record and its hearings and  
5 records shall be open to the public. The Commission is authorized and empowered to make  
6 such procedural rules as are necessary for the orderly transaction of its proceedings. Unless the  
7 Commission adopts a different rule, the proceedings, as nearly as possible, shall be in  
8 accordance with the Rules of Civil Procedure, G.S. 1A-1. The Commission may order  
9 testimony to be taken by deposition in any proceeding pending before it at any stage of such  
10 proceeding. Any person, firm or corporation, and its agents or officials, may be compelled to  
11 appear and testify and produce like documentary evidence before the Commission. Witnesses  
12 whose depositions are taken under this section, and the persons taking such depositions, shall  
13 be entitled to the same fees as are paid for like services in the courts of the State.

14 (e) The rules of procedure prescribed or adopted by the Commission shall provide  
15 affected employees or representatives of affected employees an opportunity to participate as  
16 parties to hearings under this section.

17 (f) Any member of the Commission may be removed by the Governor for inefficiency,  
18 neglect of duty, or any misfeasance or malfeasance in office. Before such removal the  
19 Governor shall give notice of hearing and state the allegations against the member of the  
20 Commission, and the same shall be heard by the Governor, and his decision shall be final. The  
21 principal office of the Commission shall be in Raleigh, North Carolina, but whenever it deems  
22 that the convenience of the public or of the parties may be promoted, or delay or expense may  
23 be minimized, the Commission may hold hearings or conduct other proceedings at any place in  
24 the State.

25 (g) In case of a contumacy, failure or refusal of any person to testify before the  
26 Commission, give any type of evidence, or to produce any books, records, papers,  
27 correspondence, memoranda or other records, such person upon such failure to obey the orders  
28 of the Commission may be punished for contempt or any other matter involving contempt as  
29 set forth and described by the general laws of the State. The Commission shall issue no order  
30 for contempt without first finding the facts involved in the proceeding. Witnesses appearing  
31 before the Commission shall be entitled to the same fees as those paid for the services of said  
32 witnesses in the courts of the State, and all such fees shall be taxed against the interested parties  
33 according to the judgment and discretion of the Commission.

34 (h) The Director shall consult with the chairman of the Commission with respect to the  
35 preparation and presentation to the Commission for adoption of all necessary forms or citations,  
36 notices of all kinds, forms of stop orders, all forms and orders imposing penalties and all forms  
37 of notices or applications for review by the Commission, and any and all other procedural  
38 papers and documents necessary for the administration of the Article as applied to employers  
39 and employees and for all procedures and proceedings brought before the Commission for  
40 review.

41 (h1) The Director shall consult with the Chief Deputy Commissioner monthly on the  
42 work of the Commission.

43 (i) A hearing examiner appointed by the chairman of the Commission shall hear, and  
44 make a determination upon, any proceeding instituted before the Commission and may hear  
45 any motion in connection therewith, assigned to the hearing examiner, and shall make a report  
46 of the determination which constitutes the hearing examiner's final disposition of the  
47 proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and  
48 all interested parties involved in any appeal or any proceeding before the hearing examiner for  
49 the hearing examiner's determination. The report of the hearing examiner shall become the final  
50 order of the Commission 30 days from the date of the report as determined by the hearing  
51 examiner, unless within the 30-day period any member of the Commission had directed that the

1 report shall be reviewed by the entire Commission as a whole. Upon application for review of  
2 any report or determination of a hearing examiner, before the 30-day period expires, the  
3 Commission shall schedule the matter for hearing, on the record, except the Commission may  
4 allow the introduction of newly discovered evidence, or in its discretion the taking of further  
5 evidence upon any question or issue. All interested parties to the original hearing shall be  
6 notified of the date, time and place of the hearing and shall be allowed to appear in person or by  
7 attorney at the hearing. Upon review of the report and determination by the hearing examiner  
8 the Commission may adopt, modify or vacate the report of the hearing examiner and notify the  
9 interested parties. The report of the hearing examiner, and the report, decision, or determination  
10 of the Commission upon review shall be in writing and shall include findings of fact,  
11 conclusions of law, and the reasons or bases for them, on all the material issues of fact, law, or  
12 discretion presented on the record. The report, decision or determination of the Commission  
13 upon review shall be final unless further appeal is made to the courts under the provisions of  
14 Chapter 150B of the General Statutes, as amended, entitled: "Judicial Review of Decisions of  
15 Certain Administrative Agencies."

16 (j) Repealed by Session Laws 1993, c. 300, s. 1."

17 **SECTION 11.** G.S. 95-136 reads as rewritten:

18 "**§ 95-136. Inspections.**

19 (a) In order to carry out the purposes of this Article, the Chief Deputy Commissioner or  
20 Director, or their duly authorized agents, upon presenting appropriate credentials to the owner,  
21 operator, or agent in charge, are authorized:

- 22 (1) To enter without delay, and at any reasonable time, any factory, plant,  
23 establishment, construction site, or other area, work place or environment  
24 where work is being performed by an employee of an employer; and  
25 (2) To inspect and investigate during regular working hours, and at other  
26 reasonable times, and within reasonable limits, and in a reasonable manner,  
27 any such place of employment and all pertinent conditions, processes,  
28 structures, machines, apparatus, devices, equipment, and materials therein,  
29 and to question privately any such employer, owner, operator, agent or  
30 employee.  
31 (3) The Chief Deputy Commissioner or Director, or their duly authorized  
32 agents, shall reinspect any place of employment where a willful serious  
33 violation was found to exist during the previous inspection and a final Order  
34 has been entered.

35 (b) In making ~~his~~ inspections and investigations under this Article, the Chief Deputy  
36 Commissioner may issue subpoenas to require the attendance and testimony of witnesses and  
37 the production of evidence under oath. Witnesses shall be reimbursed for all travel and other  
38 necessary expenses which shall be claimed and paid in accordance with the prevailing travel  
39 regulations of the State. In case of a failure or refusal of any person to obey a subpoena under  
40 this section, the district judge or superior court judge of the county in which the inspection or  
41 investigation is conducted shall have jurisdiction upon the application of the Commissioner to  
42 issue an order requiring such person to appear and testify or produce evidence as the case may  
43 require, and any failure to obey such order of the court may be punished by such court as  
44 contempt thereof.

45 (c) Subject to regulations issued by the ~~Commissioner~~ Employee Safety and Security  
46 Commission, a representative of the employer and an employee authorized by the employees  
47 shall be given an opportunity to consult with or to accompany the Chief Deputy Commissioner,  
48 Director, or their authorized agents, during the physical inspection of any work place described  
49 under subsection (a) for the purpose of aiding such inspection. Where there is no authorized  
50 employee representative, the Chief Deputy Commissioner, Director, or their authorized agents,

1 shall consult with a reasonable number of employees concerning matters of health and safety in  
2 the work place.

3 (d) (1) Any employees or an employee representative of the employees who believe  
4 that a violation of a safety or health standard exists that threatens physical  
5 harm, or that an imminent danger exists, may request an inspection by giving  
6 notice of such violation or danger to the Chief Deputy Commissioner or  
7 Director. Any such notice shall be reduced to writing, shall set forth with  
8 reasonable particularity the grounds for the notice, and shall be signed by  
9 employees or the employee representatives of the employees, and a copy  
10 shall be provided the employer or his agent no later than at the time of  
11 inspection. Upon the request of the person giving such notice, his name and  
12 the names of individual employees referred to therein shall not appear in  
13 such copy of any record published, released or made available pursuant to  
14 subsection (e) of this section. If upon receipt of such notification the Chief  
15 Deputy Commissioner or Director determines there are reasonable grounds  
16 to believe that such violation or danger exists, the Chief Deputy  
17 Commissioner or Director or their authorized agents shall promptly make a  
18 special investigation in accordance with the provisions of this section as  
19 soon as practicable to determine if such violation or danger exists. If the  
20 Chief Deputy Commissioner or Director determines there are not reasonable  
21 grounds to believe that a violation or danger exists he shall notify the  
22 employees or representatives of the employees, in writing, of such  
23 determination.

24 (2) Prior to, during and after any inspection of a work place, any employees or  
25 representative of employees employed in such work place may notify the  
26 inspecting Chief Deputy Commissioner, Director, or their agents, in writing,  
27 of any violation of this Article which they have reason to believe exists in  
28 such work place. The Chief Deputy Commissioner shall, by regulation,  
29 establish procedures for informal review of any refusal by a representative of  
30 the Chief Deputy Commissioner or Director to issue a citation with respect  
31 to any such alleged violation and shall furnish the employees or  
32 representatives of employees requesting such review a written statement of  
33 the reason for the Chief Deputy Commissioner's or Director's final  
34 disposition of the case.

35 (e) The ~~Commissioner~~ Employment Safety and Security Commission is authorized to  
36 compile, analyze, and publish, in summary or detailed form, all reports or information obtained  
37 under this section. Files and other records relating to investigations and enforcement  
38 proceedings pursuant to this Article shall not be subject to inspection and examination as  
39 authorized by G.S. 132-6 while such investigations and proceedings are pending, except that,  
40 subject to the provisions of subsection (e1) of this section, an employer cited under the  
41 provisions of this Article is entitled to receive a copy of the official inspection report which is  
42 the basis for citations received by the employer following the issuance of citations.

43 (e1) Upon the written request of and at the expense of the requesting party, official  
44 inspection reports of inspections conducted pursuant to this Article shall be available for  
45 release in accordance with the provisions contained in this subsection and subsection (e) of this  
46 section. The names of witnesses or complainants, and any information within statements taken  
47 from witnesses or complainants during the course of inspections or investigations conducted  
48 pursuant to this Article that would name or otherwise identify the witnesses or complainants,  
49 shall not be released to any employer or third party and shall be redacted from any copy of the  
50 official inspection report provided to the employer or third party. Witness statements that are in  
51 the handwriting of the witness or complainant shall, upon the request of and at the expense of

1 the requesting party, be transcribed so that information that would not name or otherwise  
2 identify the witness may be released. A witness or complainant may, however, sign a written  
3 release permitting the ~~Commissioner~~ Employment Safety and Security Commission to provide  
4 information specified in the release to any persons or entities designated in the release. Nothing  
5 in this section shall be construed to prohibit the use of the name or statement of a witness or  
6 complainant by the ~~Commissioner~~ Employment Safety and Security Commission in  
7 enforcement proceedings or hearings held pursuant to this Article. The ~~Commissioner~~  
8 Employment Safety and Security Commission shall make available to the employer 10 days  
9 prior to a scheduled enforcement hearing unredacted copies of: (i) the witness statements the  
10 ~~Commissioner~~ Employment Safety and Security Commission intends to use at the enforcement  
11 hearing, (ii) the statements of witnesses the Commissioner intends to call to testify, or (iii) the  
12 statements of witnesses whom the ~~Commissioner~~ Employment Safety and Security  
13 Commission does not intend to use that might support an employer's affirmative defense or  
14 otherwise exonerate the employer; provided a written request for the statement or statements is  
15 received by the ~~Commissioner~~ Employment Safety and Security Commission no later than 12  
16 days prior to the enforcement hearing. If the request for an unredacted copy of the witness  
17 statement or statements is received less than 12 days before a hearing, the statement or  
18 statements shall be made available as soon as practicable. The ~~Commissioner~~ Employment  
19 Safety and Security Commission may permit the use of names and statements of witnesses and  
20 complainants and information obtained during the course of inspections or investigations  
21 conducted pursuant to this Article by public officials in the performance of their public duties.

22 (f) (1) Inspections conducted under this section shall be accomplished without  
23 advance notice, subject to the exception in subdivision (2) below this  
24 subsection.

25 (2) The Chief Deputy Commissioner or Director may authorize the giving to  
26 any employer or employee advance notice of an inspection only when the  
27 giving of such notice is essential to the effectiveness of such inspection, and  
28 in keeping with regulations issued by the ~~Commissioner~~ Employment Safety  
29 and Security Commission.

30 (g) The ~~Commissioner~~ Employment Safety and Security Commission shall prescribe  
31 such rules and regulations as he may deem necessary to carry out his responsibilities under this  
32 Article, including rules and regulations dealing with the inspection of an employer's  
33 establishment."

34 **SECTION 12.** G.S. 95-136.1 reads as rewritten:

35 "**§ 95-136.1. Special emphasis inspection program.**

36 (a) As used in this section, a "special emphasis inspection" is an inspection by the  
37 ~~Department's~~ Employment Safety and Security Commission's occupational safety and health  
38 division that is scheduled because of an employer's high frequency of violations of safety and  
39 health laws or because of an employer's high risk or high rate of work-related fatalities or  
40 work-related serious injuries or illnesses.

41 (b) The ~~Department~~ Employment Safety and Security Commission shall develop and  
42 implement a special emphasis inspection program that targets for special emphasis inspection  
43 employers who:

44 (1) Have a high rate of serious or willful violations of any standard, rule, order,  
45 or other requirement under this Article, or of regulations prescribed pursuant  
46 to the Federal Occupational Safety and Health Act of 1970, in a one-year  
47 period;

48 (2) Have a high rate of work-related deaths, or a high rate of work-related  
49 serious injuries or illnesses, in a one-year period; or

1 (3) Are engaged in a type of industry determined by the ~~Department~~  
2 Employment Safety and Security Commission to be at high risk for serious  
3 or fatal work-related injuries or illnesses.

4 (4) Repealed by Session Laws 1997-443, s. 17(b).

5 To identify an employer for a special emphasis inspection, the ~~Department~~Employment  
6 Safety and Security Commission shall use the most current data available from its own  
7 database and from other sources, including State departments, divisions, boards, commissions,  
8 and other State entities. The ~~Department~~Employment Safety and Security Commission shall  
9 ensure that every employer targeted for a special emphasis inspection is inspected at least one  
10 time within the two-year period following targeting of the employer by the Department. The  
11 ~~Department~~Employment Safety and Security Commission shall update its special emphasis  
12 inspection records at least annually.

13 (c) The Director shall make information about the special emphasis inspection program  
14 available prior to the date of implementation of the program.

15 (d) The ~~Department~~Employment Safety and Security Commission shall by March 1,  
16 1995, and annually thereafter, report to the Joint Legislative Commission on Governmental  
17 Operations and the Fiscal Research Division of the General Assembly on the impact of the  
18 special emphasis inspection program on safety and health compliance and enforcement."

19 **SECTION 13.** G.S. 95-137(b)(1) reads as rewritten:

20 "(b) Procedure for Enforcement. –

21 (1) If, after an inspection or investigation, the Director issues a citation under  
22 any provisions of this Article, the Director shall, within a reasonable time  
23 after the termination of such inspection or investigation, notify the employer  
24 by certified mail with return receipt, by signature confirmation as provided  
25 by the ~~U.S. Postal~~, U.S. Postal Service by a designated delivery service  
26 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via  
27 hand delivery of any penalty, if any, the Director has recommended to the  
28 Commissioner to be proposed under the provisions of this Article and that  
29 the employer has 15 working days within which to notify the Director that  
30 the employer wishes to:

- 31 a. Contest the citation or proposed assessment of penalty; or  
32 b. Request an informal conference.

33 Following an informal conference, unless the employer and ~~Department~~the  
34 Employment Safety and Security Commission have entered into a settlement  
35 agreement, the Director shall send the employer an amended citation or  
36 notice of no change. The employer has 15 working days from the receipt of  
37 the amended citation or notice of no change to notify the Director that the  
38 employer wishes to contest the citation or proposed assessment of penalty,  
39 whether or not amended. If, within 15 working days from the receipt of the  
40 notice issued by the Director, the employer fails to notify the Director that  
41 the employer requires an informal conference to be held or intends to contest  
42 the citation or proposed assessment of penalty, and no notice is filed by any  
43 employee or representative of employees under the provisions of this Article  
44 within such time, the citation and the assessment as proposed to the  
45 ~~Commissioner~~Employment Safety and Security Commission shall be  
46 deemed final and not subject to review by any court."

47 **SECTION 14.** G.S. 95-138 reads as rewritten:

48 "**§ 95-138. Civil penalties.**

49 (a) The ~~Commissioner~~, Employment Safety and Security Commission, upon  
50 recommendation of the Director, or the North Carolina Occupational Safety and Health Review  
51 Commission in the case of an appeal, shall have the authority to assess penalties against any

1 employer who violates the requirements of this Article, or any standard, rule, or order adopted  
2 under this Article, as follows:

- 3 (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum penalty  
4 of seventy thousand dollars (\$70,000) may be assessed for each willful or  
5 repeat violation.
- 6 (2) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for each  
7 serious violation.
- 8 (2a) A penalty of up to seven thousand dollars (\$7,000) may be assessed for each  
9 violation that is adjudged not to be of a serious nature.
- 10 (3) A penalty of up to seven thousand dollars (\$7,000) may be assessed against  
11 an employer who fails to correct and abate a violation, within the period  
12 allowed for its correction and abatement, which period shall not begin to run  
13 until the date of the final Order of the Commission in the case of any appeal  
14 proceedings in this Article initiated by the employer in good faith and not  
15 solely for the delay of avoidance of penalties. The assessment shall be made  
16 to apply to each day during which the failure or violation continues.
- 17 (4) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for  
18 violating the posting requirements, as required under the provisions of this  
19 Article.

20 (b) The ~~Commissioner~~ Employment Safety and Security Commission shall adopt  
21 uniform standards that ~~the Commissioner, it,~~ the Commission, and the hearing examiner shall  
22 apply when determining appropriateness of the penalty. The following factors shall be used in  
23 determining whether a penalty is appropriate:

- 24 (1) Size of the business of the employer being charged.
- 25 (2) The gravity of the violation.
- 26 (3) The good faith of the employer.
- 27 (4) The record of previous violations; provided that for purposes of determining  
28 repeat violations, only the record within the previous three years is  
29 applicable.

30 The report of the hearing examiner and the report, decision, or determination of the  
31 Commission on appeal shall specify the standards applied in determining the reduction or  
32 affirmation of the penalty assessed by the ~~Commissioner~~ Employment Safety and Security  
33 Commission.

34 (c) The clear proceeds of all civil penalties and interest recovered by the ~~Commissioner~~,  
35 Employment Safety and Security Commission, together with the costs thereof, shall be remitted  
36 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

37 **SECTION 15.** G.S. 95-139 reads as rewritten:

38 **"§ 95-139. Criminal penalties.**

39 Any employer who willfully violates any standard, rule, regulation or order promulgated  
40 pursuant to the authority of this Article, and said violation causes the death of any employee,  
41 shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten  
42 thousand dollars (\$10,000); except that if the conviction is for a violation committed after a  
43 first conviction of such person, the employer shall be guilty of a Class 1 misdemeanor which  
44 may include a fine of not more than twenty thousand dollars (\$20,000). This section shall not  
45 prevent any prosecuting officer of the State of North Carolina from proceeding against such  
46 employer on a prosecution charging any degree of willful or culpable homicide. Any person  
47 who gives advance notice of any inspection to be conducted under this Article, without  
48 authority from the Chief Deputy Commissioner, Director, or any of their agents to whom such  
49 authority has been delegated, shall be guilty of a Class 2 misdemeanor. Whoever knowingly  
50 makes any false statement, representation, or certification in any application, record, report,  
51 plan, or any other document filed or required to be maintained pursuant to this Article, shall be

1 guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand  
2 dollars (\$10,000). Whoever shall commit any kind of assault upon or whoever kills a person  
3 engaged in or on account of the performance of investigative, inspection, or law-enforcement  
4 functions shall be subject to prosecution under the general criminal laws of the State and upon  
5 such charges as the proper prosecuting officer shall charge or allege."

6 **SECTION 16.** G.S. 95-140 reads as rewritten:

7 "**§ 95-140. Procedures to counteract imminent dangers.**

8 (a) The superior courts of this State shall have jurisdiction, upon petition of the  
9 ~~Commissioner, Employment Safety and Security Commission~~ to restrain any conditions or  
10 practices in any place of employment which are such that a danger exists, which could  
11 reasonably be expected to cause death or serious physical harm immediately or before the  
12 imminence of such danger can be eliminated through the enforcement procedures otherwise  
13 provided by this Article. Any order issued under this section may require such steps to be taken  
14 as may be necessary to avoid, correct, or remove such imminent danger and prohibit the  
15 employment or presence of any individual in locations or under conditions where such  
16 imminent danger exists, except those individuals whose presence is necessary to avoid, correct  
17 or remove such imminent danger or to maintain the capacity of a continuous process operation  
18 to assume normal operations without a complete cessation of operations, or where a cessation  
19 of operations is necessary to permit such to be accomplished in a safe and orderly manner.

20 (b) Upon the filing of any such petition the superior court shall, without the necessity of  
21 showing an adequate remedy at law, have jurisdiction to grant injunctive relief or temporary  
22 restraining order pending the outcome of an enforcement proceeding pursuant to this Article.  
23 The proceeding shall be as provided under the statutes and Rules of Civil Procedure of this  
24 State except that no temporary restraining order issued without notice shall be effective for a  
25 period longer than five days.

26 (c) Whenever and as soon as an inspector concludes that conditions or practices described  
27 in this section exist in any place of employment, ~~he~~ the inspector shall inform the affected  
28 employees and employers of the danger and that he or she is recommending to the  
29 ~~Commissioner Employment Safety and Security Commission~~ that relief be sought. If the  
30 ~~Commissioner Employment Safety and Security Commission~~ arbitrarily or capriciously fails to  
31 seek relief under this section, any employee who may be injured by reason of such failure, or  
32 the representative of such employee, may bring an action against the ~~Commissioner~~  
33 Employment Safety and Security Commission in the superior court of the district in which the  
34 imminent danger is alleged to exist or the employer has its principal office or place of business,  
35 for a writ of mandamus to compel the ~~Commissioner Employment Security and Safety~~  
36 Commission to seek such an order for such relief as may be appropriate."

37 **SECTION 17.** G.S. 95-141 reads as rewritten:

38 "**§ 95-141. Judicial review.**

39 Any person or party in interest who has exhausted all administrative remedies available  
40 under this Article and who is aggrieved by a final decision in a contested case is entitled to  
41 judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. The  
42 ~~Commissioner Employment Safety and Security Commission~~ may file in the office of the clerk  
43 of the superior court of the county wherein the person, firm or corporation under order resides,  
44 or, if a corporation is involved, in the county wherein the corporation maintains its principal  
45 place of business, or in the county wherein the violation occurred, a certified copy of a final  
46 order of the ~~Commissioner Employment Safety and Security Commission~~ unappealed from, or  
47 of a final order of the ~~Commissioner Employment Safety and Security Commission~~ affirmed  
48 upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith  
49 and notify the parties. Such judgment shall have the same effect, and all proceedings in relation  
50 thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly  
51 heard and determined by the superior court of the General Court of Justice."

1           **SECTION 18.** G.S. 95-142 reads as rewritten:

2   "**§ 95-142. Legal representation of the ~~Department of Labor~~Employment Safety and**  
3   **Security Commission.**

4       It shall be the duty of the Attorney General to represent the ~~Department of Labor~~  
5   Employment Safety and Security Commission or designate some member of his or her staff to  
6   represent ~~them~~it in all actions or proceedings in connection with this Article."

7           **SECTION 19.** G.S. 95-143 reads as rewritten:

8   "**§ 95-143. Record keeping and reporting.**

9       (a) Each employer shall make available to the ~~Commissioner~~Employment Safety and  
10   Security Commission, or ~~his~~its agents, in such manner as the ~~Commissioner~~Employment  
11   Safety and Security Commission shall require, copies of the same records and reports regarding  
12   ~~his~~the employer's activities relating to this Article as are required to be made, kept, or  
13   preserved by section 8(c) of the Federal Occupational Safety and Health Act of 1970 (P.L.  
14   91-596) and regulations made pursuant thereto.

15       (b) Each employer shall make, keep and preserve and make available to the  
16   ~~Commissioner~~Employment Safety and Security Commission such records regarding ~~his~~the  
17   ~~employer's~~ activities relating to this Article as the ~~Commissioner~~Employment Safety and  
18   Security Commission may prescribe by regulation as necessary and appropriate for the  
19   enforcement of this Article or for developing information regarding the causes and prevention  
20   of occupational accidents and illnesses. In order to carry out the provisions of this section such  
21   regulations may include provisions requiring employers to conduct periodic inspections. The  
22   ~~Commissioner~~Employment Safety and Security Commission shall also issue regulations  
23   requiring that employers, through posting of notices or other appropriate means, keep the  
24   employees informed of their protections and obligations under this Article, including the  
25   provisions of applicable standards. The ~~Commissioner~~Employment Safety and Security  
26   Commission shall prescribe regulations requiring employers to maintain accurate records of,  
27   and to make reports at least annually on, work-related deaths, injuries and illnesses other than  
28   minor injuries requiring only first-aid treatment and which do not involve medical treatment,  
29   loss of consciousness, restriction of work or motion, or transfer to another job.

30       (c) The ~~Commissioner~~Employment Safety and Security Commission shall issue  
31   regulations requiring employers to maintain accurate records of employee exposure to  
32   potentially toxic materials ~~of~~or harmful physical agents which are required to be monitored or  
33   measured under this Article. Such regulations shall provide employees or their representatives  
34   with an opportunity to observe such monitoring or measuring, and to have access to the records  
35   thereof. Such regulations shall also make appropriate provisions for each employee or former  
36   employee to have access to such records as will indicate ~~his~~the employee's own exposure to  
37   toxic materials or harmful physical agents. Each employer shall promptly notify any employee  
38   who has been or is being exposed to toxic materials or harmful physical agents in  
39   concentrations or at levels which exceed those prescribed by an applicable safety and health  
40   standard promulgated under this Article and shall inform any employee who is being thus  
41   exposed of the corrective action being taken.

42       (d) Any information obtained by the ~~Commissioner~~Employment Safety and Security  
43   Commission or ~~his~~its duly authorized agents under this Article shall be obtained with a  
44   minimum burden upon employers, especially those operating small businesses. Unnecessary  
45   duplication of efforts in obtaining information shall be reduced to the maximum extent  
46   feasible."

47           **SECTION 20.** G.S. 95-144 reads as rewritten:

48   "**§ 95-144. Statistics.**

49       (a) In order to further the purposes of this Article, the ~~Commissioner~~Employment  
50   Safety and Security Commission shall develop and maintain an effective program of collection,  
51   compilation, and analysis of occupational safety and health statistics. The ~~Commissioner~~

1 Employment Safety and Security Commission shall compile accurate statistics on work injuries  
2 and illnesses which shall include all disabling, serious or significant injuries or illnesses,  
3 whether or not involving loss of time from work, other than minor injuries requiring only  
4 first-aid treatment and which do not involve medical treatment, loss of consciousness,  
5 restriction of work or motion, or transfer to another job. On the basis of records made and kept  
6 pursuant to the provisions of this Article, employers shall file such reports with the  
7 ~~Commissioner~~ Employment Safety and Security Commission as ~~he~~ it shall prescribe by  
8 regulations and as may be necessary to carry out his or her functions.

9 (b) ~~A listing of employment by area and industry of employers who have an assigned~~  
10 ~~account number by the Employment Security Commission shall be supplied annually to the~~  
11 ~~Commissioner by the Employment Security Commission of this State. The listing of~~  
12 ~~employment by area and industry shall contain at least the following: employer name;~~  
13 ~~Employment Security Commission account number; indication of whether multiple or a single~~  
14 ~~report unit; number of reporting units; average employment; establishment size code;~~  
15 ~~geographical area; any four-digit code; and any other information deemed necessary by the~~  
16 ~~Commissioner to meet federal reporting requirements.~~ Beginning January 1, 2010, and annually  
17 thereafter, the Employment Safety and Security Commission shall submit annually a report of  
18 its occupational safety and health statistics to the Governor, to the General Assembly, and to  
19 the Fiscal Research Division."

20 **SECTION 21.** G.S. 95-145 reads as rewritten:

21 "**§ 95-145. Reports to the Secretary.**

22 (a) The ~~Commissioner~~ Employment Safety and Security Commission shall require  
23 employers in the State to make reports to the Secretary in the same manner and to the same  
24 extent as if the plan in force under this Article were not in effect, and

25 (b) The ~~Commissioner~~ Employment Safety and Security Commission shall make such  
26 reports to the Secretary in such form and containing such information as the Secretary from  
27 time to time shall require."

28 **SECTION 22.** G.S. 95-146 reads as rewritten:

29 "**§ 95-146. Continuation and effectiveness of this Article.**

30 The ~~Commissioner~~ Employment Safety and Security Commission shall from time to time  
31 furnish to the Secretary information and assurances that this Article is being administered by  
32 adequate methods and by standards and enforcement procedures which are and will continue to  
33 be as effective as federal standards."

34 **SECTION 23.** G.S. 95-147 reads as rewritten:

35 "**§ 95-147. Training and employee education.**

36 (a) The ~~Commissioner~~ Employment Safety and Security Commission, after consultation  
37 with appropriate departments and agencies of the State and subdivisions of government, shall  
38 conduct, directly or by grants or contracts, (i) education programs to provide an adequate  
39 supply of qualified personnel to carry out the purposes of this Article, and (ii) informational,  
40 educational and training programs on the importance of and proper use of adequate safety and  
41 health equipment to encourage voluntary compliance.

42 (b) The ~~Commissioner is also authorized to~~ Employment Safety and Security Commission  
43 may conduct, directly or by grants or contracts, short-term training of personnel engaged in  
44 work related to the ~~Commissioner's~~ its responsibilities under this Article.

45 (c) The ~~Commissioner~~ Employment Safety and Security Commission shall provide  
46 employers and employees programs covering recognition, avoidance and prevention of unsafe  
47 and unhealthful working conditions in places of employment and shall advise employers and  
48 employees, or their representatives, of effective means to prevent occupational injuries and  
49 illnesses."

50 **SECTION 24.** G.S. 95-148 reads as rewritten:

51 "**§ 95-148. Safety and health programs of State agencies and local governments.**

1 It shall be the responsibility of each administrative department, commission, board, division  
2 or other agency of the State and of counties, cities, towns and subdivisions of government to  
3 establish and maintain an effective and comprehensive occupational safety and health program  
4 which is consistent with the standards and regulations promulgated under this Article. The head  
5 of each agency shall:

- 6 (1) Provide safe and healthful places and conditions of employment, consistent  
7 with the standards and regulations promulgated by this Article;
- 8 (2) Acquire, maintain, and require the use of safety equipment, personal  
9 protective equipment, and devices reasonably necessary to protect  
10 employees;
- 11 (3) Consult with and encourage employees to cooperate in achieving safe and  
12 healthful working conditions;
- 13 (4) Keep adequate records of all occupational accidents and illnesses for proper  
14 evaluation and corrective action;
- 15 (5) Consult with the Chief Deputy Commissioner as to the adequacy as to form  
16 and content of records kept pursuant to this section;
- 17 (6) Make an annual report to the ~~Commissioner~~ Employment Safety and  
18 Security Commission with respect to occupational accidents and injuries and  
19 the agency's program under this section.

20 The ~~Commissioner~~ Employment Safety and Security Commission shall transmit annually to  
21 the Governor and the General Assembly a report of the activities of the State agency and  
22 instrumentalities under this section. If the Chief Deputy Commissioner has reason to believe  
23 that any local government program or program of any agency of the State is ineffective, he or  
24 she shall, after unsuccessfully seeking by negotiations to abate such failure, include this in ~~his~~  
25 the Employment Safety and Security Commission's annual report to the Governor and the  
26 General Assembly, together with the reasons therefor, and may recommend legislation intended  
27 to correct such condition.

28 The ~~Commissioner~~ Employment Safety and Security Commission shall have access to the  
29 records and reports kept and filed by State agencies and instrumentalities pursuant to this  
30 section unless such records and reports are required to be kept secret in the interest of national  
31 defense, in which case the Commissioner shall have access to such information as will not  
32 jeopardize national defense.

33 Employees of any agency or department covered under this section are afforded the same  
34 rights and protections as granted employees in the private sector.

35 This section shall not apply to volunteer fire departments not a part of any municipality.

36 Any municipality with a population of 10,000 or less may exclude its fire department from  
37 the operation of this section by a resolution of the governing body of the municipality, except  
38 that the resolution may not exclude those firefighters who are employees of the municipality.

39 The North Carolina Fire and Rescue Commission shall recommend regulations and  
40 standards for fire departments."

41 **SECTION 25.** G.S. 95-149 reads as rewritten:

42 **"§ 95-149. Authority to enter into contracts with other State agencies and subdivisions of**  
43 **government.**

44 The ~~Commissioner~~ Employment Safety and Security Commission may enter into contracts  
45 with the Department of Health and Human Services or any other State officer or State agency  
46 or State instrumentality, or any municipality, county, or other political subdivision of the State,  
47 for the enforcement, administration, and any other application of the provisions of this Article."

48 **SECTION 26.** G.S. 95-150 reads as rewritten:

49 **"§ 95-150. Assurance of adequate funds to enforce Article.**

50 The ~~Commissioner~~ Employment Safety and Security Commission shall submit to the  
51 General Assembly a budget and request for appropriations to adequately administer this Article

1 which shall be sufficient to give satisfactory assurance that this State will devote adequate  
2 funds to the administration and enforcement of the standards herein provided and the proper  
3 administration of this Article as required by federal standards."

4 **SECTION 27.** G.S. 95-152 reads as rewritten:

5 **"§ 95-152. Confidentiality of trade secrets.**

6 All information reported to or otherwise obtained by the ~~Commissioner~~ Employment Safety  
7 and Security Commission or ~~his~~ its agents or representatives in connection with any inspection  
8 or proceeding under this Article which contains or which might reveal a trade secret shall be  
9 considered confidential, as provided by section 1905 of Title 18 of U.S.C., except as to carrying  
10 out this Article or when it is relevant in any proceeding under this Article. In any such  
11 proceeding the ~~Commissioner, the Commission,~~ Employment Safety and Security Commission,  
12 the Chief Deputy Commissioner, or the court shall issue such orders as may be appropriate to  
13 protect the confidentiality of trade secrets."

14 **SECTION 28.** G.S. 95-154 reads as rewritten:

15 **"§ 95-154. Authorization for similar safety and health federal-state programs.**

16 Consistent with the requirements and conditions provided in this Article the State, upon the  
17 recommendation of the ~~Commissioner of Labor~~ Employment Safety and Security Commission  
18 and approval of the Governor, may enter into agreements or arrangements with other federal  
19 agencies for the purpose of administering occupational safety and health measures for such  
20 employees and employers within the State of North Carolina as may be covered by such federal  
21 safety and health statutes."

#### 22 **PART IV. IDENTIFICATION OF TOXIC OR HAZARDOUS SUBSTANCES**

23 **SECTION 29.** G.S. 95-174 reads as rewritten:

24 **"§ 95-174. Definitions.**

25 (a) 'Chemical manufacturer' shall mean a manufacturing facility classified in Standard  
26 Industrial Classification (SIC) Codes 20 through 39 where chemicals are produced for use or  
27 distribution in North Carolina.

28 (b) 'Chemical name' shall mean the scientific designation of a chemical in accordance  
29 with the nomenclature system developed by the International Union of Pure and Applied  
30 Chemistry (IUPAC), or the Chemical Abstracts Service (CAS) rules of nomenclature or a name  
31 which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

32 (c) 'Common name' shall mean any designation or identification such as a code name,  
33 code number, trade name, brand name or generic name used to identify a chemical other than  
34 by its chemical name.

35 (d) 'Distributor' shall mean any business, other than a chemical manufacturer or  
36 importer, which supplies hazardous chemicals to other distributors or to purchasers.

37 (e) 'Employee' shall mean any person who is employed by an employer under normal  
38 operating conditions.

39 (f) 'Employer' means a person engaged in business who has employees, including the  
40 State and its political subdivisions but excluding an individual whose only employees are  
41 domestic workers or casual laborers who are hired to work at the individual's residence.

42 (g) 'Facility' shall mean one or more establishments, factories, or buildings located at  
43 one contiguous site in North Carolina.

44 (h) 'Fire Chief' shall mean Fire Chief or Fire Marshall, or Emergency Response  
45 Coordinator in the absence of a Fire Chief or Fire Marshall for the appropriate local fire  
46 department.

47 (i) Repealed by Session Laws 1987, c. 489, s. 1.

48 (j) 'Fire Department' shall mean the fire department having jurisdiction over the  
49 facility.  
50

1 (k) 'Hazardous chemical' shall mean any element, chemical compound or mixture of  
2 elements and/or compounds which is a physical hazard or health hazard as defined in  
3 subsection (c) of the OSHNC Standard or a hazardous substance as defined in standards  
4 adopted by the Occupational Safety and Health Division of the ~~North Carolina Department of~~  
5 ~~Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC~~  
6 ~~7).Employment Safety and Security Commission and published in the North Carolina~~  
7 ~~Administrative Code.~~

8 (l) 'Hazardous Substance List' shall mean the list required by G.S. 95-191.

9 (m) 'Hazardous substance trade secret' means any formula, plan, pattern, device, process,  
10 production information, or compilation of information, which is not patented, which is known  
11 only to the employer, the employer's licensees, the employer's employees, and certain other  
12 individuals, and which is used or developed for use in the employer's business, and which gives  
13 the employer possessing it the opportunity to obtain a competitive advantage over businesses  
14 who do not possess it, or the secrecy of which is certified by an appropriate official of the  
15 federal government as necessary for national defense purposes. The chemical name and  
16 Chemical Abstracts Service number of a substance shall be considered a trade secret only if the  
17 employer can establish that the identity or composition of the substance cannot be readily  
18 ascertained without undue expense by analytical techniques, laboratory procedures, or other  
19 lawful means available to a competitor.

20 (n) 'Label' shall mean any written, printed, or graphic material displayed on or affixed  
21 to containers of hazardous chemicals.

22 (o) 'Manufacturing facility' shall mean a facility classified in SIC Codes 20 through 39  
23 which manufactures or uses a hazardous chemical or chemicals in North Carolina.

24 (p) 'Material Safety Data Sheets' or 'MSDS' shall mean chemical information sheets  
25 adopted by the Occupational Safety and Health Division of the ~~North Carolina Department of~~  
26 ~~Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC~~  
27 ~~7).Employment Safety and Security Commission and published in the North Carolina~~  
28 ~~Administrative Code.~~

29 (q) 'Nonmanufacturing facility' shall mean any facility in North Carolina other than a  
30 facility in SIC Code 20 through 39, the State of North Carolina (and its political subdivisions)  
31 and volunteer emergency service organizations whose members may be exposed to chemical  
32 hazards during emergency situations.

33 (r) 'OSHNC Standard' shall mean the current Hazard Communication Standard adopted  
34 by the Occupational Safety and Health Division of ~~North Carolina Department of Labor in Title~~  
35 ~~13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).Employment Safety~~  
36 ~~and Security Commission and published in the North Carolina Administrative Code.~~

37 (s) 'Storage and Container' shall have the ordinary meaning however it does not include  
38 pipes used in the transfer of substances or the fuel tanks of self propelled internal combustion  
39 vehicles."

40 **SECTION 30.** G.S. 95-195 reads as rewritten:

41 "**§ 95-195. Complaints, investigations, penalties.**

42 (a) Complaints of violations of this Part shall be filed in writing with the ~~Commissioner~~  
43 ~~of Labor. Employment Safety and Security Commission. Such complaints-Complaints~~ received  
44 in writing from any Fire Chief relating to alleged violations of this Part shall be investigated in  
45 a timely manner by the ~~Commissioner of Labor or his~~ Chief Deputy Commissioner or that  
46 officer's designated representative.

47 (b) Duly designated representatives of the ~~Commissioner of Labor, Employment Safety~~  
48 ~~and Security Commission,~~ upon presentation of appropriate credentials to the employer, shall  
49 have the right of entry into any facility at reasonable times to inspect and investigate  
50 complaints within reasonable limits, and in a reasonable manner. Following the investigation,  
51 the ~~Commissioner Employment Safety and Security Commission~~ shall make appropriate

1 findings. Either the employer or the person complaining of a violation may request an  
2 administrative hearing pursuant to Chapter 150B of the General Statutes. This request for an  
3 administrative hearing shall be submitted to the ~~Commissioner of Labor Employment Safety~~  
4 ~~and Security Commission~~ within 14 days following the ~~Commissioner making his-its~~ findings.  
5 The ~~Commissioner Employment Safety and Security Commission~~ shall within 30 days of  
6 receiving the request hold an administrative hearing in accordance with Article 3 of Chapter  
7 150B of the General Statutes.

8 (c) If the ~~Commissioner of Labor Employment Safety and Security Commission~~ finds  
9 that the employer violated this Article, the ~~Commissioner Employment Safety and Security~~  
10 ~~Commission~~ shall order the employer to comply within 14 days following receipt of written  
11 notification of the violation. Employers not complying within 14 days following receipt of  
12 written notification of a violation shall be subject to civil penalties of not more than one  
13 thousand dollars (\$1,000) per violation imposed by the ~~Commissioner of Labor Employment~~  
14 ~~Safety and Security Commission~~. There shall be a separate offense for each day the violation  
15 continues. The clear proceeds of civil penalties provided for in this section shall be remitted to  
16 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

17 (d) Any order by the ~~Commissioner Employment Safety and Security Commission~~  
18 under subsection (b) or (c) of this section shall be subject to judicial review as provided under  
19 Article 4 of Chapter 150B of the General Statutes."

20 **SECTION 31.** G.S. 95-196 reads as rewritten:

21 "**§ 95-196. Employee rights.**

22 No employer shall discharge, or cause to be discharged, or otherwise discipline or in any  
23 manner discriminate against an employee at the facility because the employee has assisted the  
24 ~~Commissioner of Labor Employment Safety and Security Commission~~ or ~~his-its~~ representative  
25 or the Fire Chief or ~~his~~ or ~~her~~ representative who may make or is making an inspection under  
26 G.S. 95-194(c) or G.S. 95-195(b), or has testified or is about to testify in any proceeding under  
27 this Article, or has used the provisions of G.S. 95-208."

28 **SECTION 32.** G.S. 95-197 reads as rewritten:

29 "**§ 95-197. Withholding hazardous substance trade secret information.**

30 (a) An employer who believes that all or any part of the information required under  
31 G.S. 95-191, 95-192, 95-194(b) or 95-194(d) is a hazardous substance trade secret may  
32 withhold the information, provided that (i) hazard information on chemicals the identity of  
33 which is claimed as a hazardous substance trade secret is provided to the Fire Chief who shall  
34 hold it in confidence and (ii) the employer claims that the information is a hazardous substance  
35 trade secret.

36 (b) Any person in North Carolina may request in writing that the ~~Commissioner of~~  
37 ~~Labor Employment Safety and Security Commission~~ review in camera an employer's  
38 hazardous substance trade secret claim. If the ~~Commissioner of Labor Employment Safety and~~  
39 ~~Security Commission~~ finds that the claim is other than completely valid, this finding shall be  
40 appealable under subsection (d) of this section. If the ~~Commissioner of Labor Employment~~  
41 ~~Safety and Security Commission~~ finds that the claim is valid, ~~he-it~~ shall then determine whether  
42 the nonconfidential information is sufficient for the Fire Chief to fulfill the responsibilities of  
43 ~~his-that~~ office. If the ~~Commissioner of Labor Employment Safety and Security Commission~~  
44 finds that the information is not sufficient, ~~he~~ or ~~she~~ shall direct the employer to supplement the  
45 information with such other information as will provide the Fire Chief with sufficient  
46 information to fulfill the responsibilities of his office, but this finding shall be appealable under  
47 subsection (d) of this section.

48 (c) The ~~Commissioner of Labor Employment Safety and Security Commission~~ and the  
49 Fire Chief shall protect from disclosure any or all information coming into either or both of  
50 their possession when such information is marked by the employer as confidential, and they  
51 shall return all information so marked to the employer at the conclusion of their determination

1 by the ~~Commissioner of Labor~~ Employment Safety and Security Commission. Any person who  
2 has access to any hazardous substance trade secret solely pursuant to this section and who  
3 discloses it knowing it to be a hazardous substance trade secret to any person not authorized to  
4 receive it shall be guilty of a Class I felony, and if knowingly or negligently disclosed to any  
5 person not authorized, shall be subject to civil action for damages and injunction by the owner  
6 of the hazardous substance trade secret, including, without limitation, actions under Article 24  
7 of Chapter 66 of the General Statutes.

8 (d) The employer, Fire Chief, or person making the original request who is an  
9 aggrieved party shall have 30 days after receipt of notification by the ~~Commissioner~~  
10 Employment Safety and Security Commission of ~~his~~ its findings under subsection (b) to request  
11 an administrative hearing on the determination. Any such hearing shall be held in a manner  
12 similar to that provided for in G.S. Chapter 150B, Article 3 and the decision upon the request of  
13 any aggrieved party shall be subject to the judicial review provided for by G.S. Chapter 150B,  
14 Article 4, provided that these administrative and judicial hearings shall be conducted in camera  
15 to assure the confidentiality of the information being reviewed."

16 **SECTION 33.** G.S. 95-198 reads as rewritten:

17 "**§ 95-198. Medical emergency and nonemergency situations.**

18 (a) Where a treating health care provider determines that a medical emergency exists  
19 and the specific chemical identity of a hazardous chemical is necessary for emergency or  
20 first-aid treatment, the chemical manufacturer, importer, or employer shall immediately  
21 disclose the specific chemical identity of a hazardous substance trade secret substance to that  
22 treating physician or nurse, regardless of the existence of written statement of need or a  
23 confidentiality agreement. The chemical manufacturer, importer, or employer may require a  
24 written statement of need and a confidentiality agreement as soon as circumstances permit. The  
25 confidentiality agreement (i) may restrict the use of the information to the health purposes  
26 indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the  
27 event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely  
28 damages; and (iii) may not include requirements for the posting of a penalty bond. The parties  
29 are not precluded from pursuing noncontractual remedies to the extent permitted by law.

30 (b) In nonemergency situations, a chemical manufacturer, importer, or employer shall,  
31 upon request, disclose a specific chemical identity, otherwise permitted to be withheld under  
32 this section, to a responsible party, as defined in the standards adopted in Title 13, Subchapter  
33 7F of the North Carolina Administrative Code (13 NCAC 7F), or other rules subsequently  
34 adopted by the Employment Safety and Security Commission, providing medical or other  
35 occupational health services to exposed persons if the request is in writing and states the  
36 medical need for the information. The employer may require that the responsible party sign a  
37 confidentiality agreement prior to release of the information. The parties are not precluded from  
38 pursuing noncontractual remedies to the extent permitted by law.

39 (c) If the chemical manufacturer, importer or employer denies a written request for  
40 hazardous substance trade secret release, or does not provide this information within 30 days,  
41 the ~~Department of Labor~~ Employment Safety and Security Commission shall initiate the trade  
42 secret claim determination process under G.S. 95-197."

43 **SECTION 34.** G.S. 95-208 reads as rewritten:

44 "**§ 95-208. Community information on hazardous chemicals.**

45 (a) Any person in North Carolina may request in writing from the employer a list of  
46 chemicals used or stored at the facility. The request shall include the name and address of the  
47 person making the request and a statement of the purpose for the request. If the person is  
48 requesting the list on behalf of or for the use of an organization, partnership, or corporation, he  
49 shall also disclose the name and business address of such organization, partnership, or  
50 corporation. The request may include, at the option of the employer, a statement to the effect  
51 that the information will be used only for the purpose stated. The employer shall furnish to the

1 person making the request a list containing, at a minimum, all chemicals included on the  
2 Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an  
3 MSDS for each chemical for which an MSDS is available and is requested. Whenever an  
4 employer has withheld a chemical under the provisions of G.S. 95-197 from the information  
5 provided under G.S. 95-208, the employer must state that the information is being withheld  
6 and, upon request, must provide the MSDS for the chemical. Additional information may be  
7 furnished to the person making the request at the option of the employer. The employer shall  
8 provide, at a fee not to exceed the cost of reproducing the materials, the materials requested  
9 within 10 working days of the date the employer receives the written request for information.

10 (b) If the employer fails or refuses to provide the information required under subsection  
11 (a) of this section, the person requesting the information may request in writing that the  
12 ~~Commissioner of Labor~~ Employment Safety and Security Commission review the request. The  
13 Commissioner of Labor may conduct an investigation in the same manner as provided in  
14 G.S. 95-195(b). Following the investigation, the ~~Commissioner~~ Employment Safety and  
15 Security Commission shall make appropriate findings. Either the employer or the person  
16 making the initial request may request an administrative hearing pursuant to Chapter 150B of  
17 the General Statutes. This request for an administrative hearing shall be submitted to the  
18 ~~Commissioner of Labor~~ Employment Safety and Security Commission within 30 days  
19 following the Commissioner making his findings. The ~~Commissioner of Labor~~ Employment  
20 Safety and Security Commission shall within 30 days of receiving the request hold an  
21 administrative hearing to consider the request for information under subsection (a) of this  
22 section. This hearing shall be held as provided for in G.S. Chapter 150B, Article 3. If the  
23 ~~Commissioner of Labor~~ Employment Safety and Security Commission finds that the request  
24 complies with the requirements of subsection (a) of this section, the ~~Commissioner of Labor~~  
25 Employment Safety and Security Commission shall direct that the employer provide to the  
26 person making the request a list containing, at a minimum, all chemicals used or stored at the  
27 facility included on the Hazardous Substance List, the class of each chemical as defined in  
28 G.S. 95-191(a)(2), and an MSDS for each chemical for which an MSDS is available and is  
29 requested and may in his discretion assess civil penalties as provided in G.S. 95-195(c);  
30 provided that it shall be a defense to such disclosure if the employer proves that the information  
31 has been requested directly or indirectly by, or in behalf of, a competitor of the employer, or  
32 that such information is a Hazardous Substance Trade Secret, or that the request did not comply  
33 with the requirements of subsection (a) of this section.

34 (c) Any order by the Commissioner of Labor under subsection (b) of this section shall  
35 be subject to judicial review as provided under G.S. Chapter 150B, Article 4."  
36

## 37 **PART V. SAFETY AND HEALTH PROGRAMS AND COMMITTEES**

### 38 **SECTION 35. G.S. 95-251 reads as rewritten:**

#### 39 **"§ 95-251. Safety and health programs.**

40 (a) Establishment of safety and health programs.

41 (1) Except as provided in subdivision (2) of this subsection, each employer with  
42 an experience rate modifier of 1.5 or greater shall, in accordance with this  
43 section, establish and carry out a safety and health program to reduce or  
44 eliminate hazards and to prevent injuries and illnesses to employees.

45 (2) Employers with an experience rate modifier of 1.5 or greater which provide  
46 temporary help services shall, in accordance with this section, establish and  
47 implement a safety and health program to reduce or eliminate hazards and to  
48 prevent injuries and illnesses to its full-time employees permanently located  
49 at the employer's worksite. Employers which provide temporary help  
50 services shall not be required to establish and implement a safety and health

1 program under this section for its employees assigned to a client's worksite.

2 This subdivision shall not apply to employee leasing companies.

- 3 (3) The ~~Commissioner~~ Employment Safety and Security Commission may  
4 modify the application of the requirements of this section to classes of  
5 employers where the ~~Commissioner~~ Employment Safety and Security  
6 Commission determines that, in light of the nature of the risks faced by the  
7 employees of these employers, such a modification would not reduce the  
8 employees' safety and health protection.

9 (b) Safety and health program requirements. A safety and health program established  
10 and implemented under this section shall be a written program that shall include at least all of  
11 the following:

- 12 (1) Methods and procedures for identifying, evaluating, and documenting safety  
13 and health hazards.
- 14 (2) Methods and procedures for correcting the safety and health hazards  
15 identified under subdivision (1) of this subsection.
- 16 (3) Methods and procedures for investigating work-related fatalities, injuries,  
17 and illnesses.
- 18 (4) Methods and procedures for providing occupational safety and health  
19 services, including emergency response and first aid procedures.
- 20 (5) Methods and procedures for employee participation in the implementation of  
21 the safety and health program.
- 22 (6) Methods and procedures for responding to the recommendations of the  
23 safety and health committee, where applicable.
- 24 (7) Methods and procedures for providing safety and health training and  
25 education to employees and to members of any safety and health committee  
26 established under G.S. 95-252.
- 27 (8) The designation of a representative of the employer who has the  
28 qualifications and responsibility to identify safety and health hazards and the  
29 authority to initiate corrective action where appropriate.
- 30 (9) In the case of a worksite where employees of two or more employers work,  
31 procedures for each employer to protect employees at the worksite from  
32 hazards under the employer's control, including procedures to provide  
33 information on safety and health hazards to other employers and employees  
34 at the worksite.
- 35 (10) Any other provisions as the ~~Commissioner~~ Employment Safety and Security  
36 Commission requires to effectuate the purposes of this section.

37 (c) No loss of pay. The time during which employees are participating in training and  
38 education activities under this section shall be considered as hours worked for purposes of  
39 wages, benefits, and other terms and conditions of employment. The training and education  
40 shall be provided by an employer at no cost to the employees of the employer."

41 **SECTION 36.** G.S. 95-252 reads as rewritten:

42 "**§ 95-252. Safety and health committees required.**

43 (a) Establishment of safety and health committees. Except as provided in subsection (b)  
44 of this section, each employer with 11 or more employees and an experience rate modifier of  
45 1.5 or greater shall provide for the establishment of safety and health committees and the  
46 selection of employee safety and health representatives in accordance with this section.

47 (b) Temporary help services. Temporary employees of employers which provide  
48 temporary help services shall not be counted as part of the 11 or more employees needed to  
49 establish a safety and health committee under this section, and employers which provide  
50 temporary help services shall not be required to establish a safety and health committee under

1 this section for its employees assigned to a client's worksite. This subsection shall not apply to  
2 employee leasing companies.

3 (c) Safety and health committee requirements.

4 (1) In general. Each employer covered by this section shall establish a safety  
5 and health committee at each worksite of the employer, except as provided  
6 as follows:

7 a. An employer covered by this section whose employees do not  
8 primarily report to or work at a fixed location is required to have  
9 only one safety and health committee to represent all employees.

10 b. A safety and health committee is not required at a covered  
11 employer's worksite with less than 11 employees.

12 c. ~~The Commissioner~~ Employment Safety and Security Commission  
13 may, by rule, modify the application of this subdivision to worksites  
14 where employees of more than one employer are employed.

15 (2) Membership. Each safety and health committee shall consist of:

16 a. The employee safety and health representatives selected or appointed  
17 under subsection (d) of this section.

18 b. As determined appropriate by the employer, employer  
19 representatives, the number of which may not exceed the number of  
20 employee representatives.

21 (3) Chairpersons. Each safety and health committee shall be cochaired by:

22 a. A representative selected by the employer.

23 b. A representative selected by the employee members of the  
24 committee.

25 (4) Rights. Each safety and health committee shall, within reasonable limits and  
26 in a reasonable manner, exercise the following rights:

27 a. Review any safety and health program established by the employer  
28 under G.S. 95-251.

29 b. Review incidents involving work-related fatalities, injuries and  
30 illnesses, and complaints by employees regarding safety or health  
31 hazards.

32 c. Review, upon the request of the committee or upon the request of the  
33 employer representatives or employee representatives of the  
34 committee, the employer's work injury and illness records, other than  
35 personally identifiable medical information, and other reports or  
36 documents relating to occupational safety and health.

37 d. Conduct inspections of the worksite at least once every three months  
38 and in response to complaints by employees or committee members  
39 regarding safety or health hazards.

40 e. Conduct interviews with employees in conjunction with inspections  
41 of the worksite.

42 f. Conduct meetings, at least once every three months, and maintain  
43 written minutes of the meetings.

44 g. Observe the measurement of employee exposure to toxic materials  
45 and harmful physical agents.

46 h. Establish procedures for exercising the rights of the committee.

47 i. Make recommendations on behalf of the committee, and in making  
48 recommendations, permit any members of the committee to submit  
49 separate views to the employer for improvements in the employer's  
50 safety and health program and for the correction of hazards to  
51 employee safety or health, except that recommendations shall be

- 1 advisory only and the employer shall retain full authority to manage  
2 the worksite.
- 3 j. Accompany, upon request, the ~~Commissioner or the Commissioner's~~  
4 ~~representative~~ Chief Deputy Commissioner or that officer's designee  
5 during any physical inspection of the worksite.
- 6 (5) Time for committee activities. The employer shall permit members of the  
7 committee established under this section to take the time from work  
8 reasonably necessary to exercise the rights of the committee without  
9 suffering any loss of pay or benefits for time spent on duties of the  
10 committee.
- 11 (d) Employee safety and health representatives.
- 12 (1) In general. Safety and health committees established under this section shall  
13 include:
- 14 a. One employee safety and health representative where the average  
15 number of nonmanagerial employees of the employer at the worksite  
16 during the preceding year was more than 10, but less than 50.
- 17 b. Two employee safety and health representatives where the average  
18 number of nonmanagerial employees of the employer at the worksite  
19 during the preceding year was 50 or more, but less than 100.
- 20 c. An additional employee safety and health representative for each  
21 additional 100 such employees at the worksite, up to a maximum of  
22 six employee safety and health representatives.
- 23 d. Where an employer's employees do not primarily report to or work at  
24 a fixed location or at worksites where employees of more than one  
25 employer are employed, a number of employee safety and health  
26 representatives as determined by the ~~Commissioner~~ Employment  
27 Safety and Security Commission by rule.
- 28 (2) Selection. Employee safety and health representatives shall be selected by  
29 and from among the employer's nonmanagerial employees in accordance  
30 with rules adopted by the ~~Commissioner~~ Employment Safety and Security  
31 Commission. The rules adopted by the ~~Commissioner~~ Employment Safety  
32 and Security Commission may provide for different methods of selection of  
33 employee safety and health representatives at worksites with no bargaining  
34 representative, worksites with one bargaining representative, and worksites  
35 with more than one bargaining representative."

36 **SECTION 37.** G.S. 95-254 reads as rewritten:

37 **"§ 95-254. Rules.**

38 (a) Safety and health programs. Not later than one year after July 15, 1992, the  
39 ~~Commissioner~~ Employment Safety and Security Commission shall adopt final rules concerning  
40 the establishment and implementation of employer safety and health programs under  
41 G.S. 95-251. Rules adopted shall include provisions for the training and education of  
42 employees and safety and health committee members. These rules shall include at least all of  
43 the following:

- 44 (1) Provision for the training and education of employees, including safety and  
45 health committee members, in a manner that is readily understandable by the  
46 employees, concerning safety and health hazards, control measures, the  
47 employer's safety and health program, employee rights, and applicable laws  
48 and regulations.
- 49 (2) Provision for the training and education of the safety and health committee  
50 concerning methods and procedures for hazard recognition and control, the  
51 conduct of worksite safety and health inspections, the rights of the safety and

health committee, and other information necessary to enable the members to carry out the activities of the committee under G.S. 95-252.

(3) Requirement that training and education be provided to new employees at the time of employment and to safety and health committee members at the time of selection.

(4) Requirement that refresher training be provided on at least an annual basis and that additional training be provided to employees and to safety and health committee members when there are changes in conditions or operations that may expose employees to new or different safety or health hazards or when there are changes in safety and health rules or standards under Article 16 of this Chapter that apply to the employer.

(b) Safety and health committees. Not later than one year after July 15, 1992, the ~~Commissioner~~ Employment Safety and Security Commission shall adopt final rules for the establishment and operation of safety and health committees under G.S. 95-252. The rules shall include provisions concerning at least the following:

(1) The establishment of such committees by an employer whose employees do not primarily report to or work at a fixed location.

(2) The establishment of committees at worksites where employees of more than one employer are employed.

(3) The employer's obligation to enable the committee to function properly and effectively, including the provision of facilities and materials necessary for the committee to conduct its activities, and the maintenance of records and minutes developed by the committee.

(4) The provision for different methods of selection of employee safety and health representatives at worksites with no bargaining representative, worksites with one bargaining representative, and worksites with more than one bargaining representative."

**SECTION 38.** G.S. 95-255 reads as rewritten:

**"§ 95-255. Reports.**

(a) Upon the final adoption of all rules required to be adopted by the ~~Commissioner~~ Employment Safety and Security Commission under this Article, the ~~Commissioner~~ Employment Safety and Security Commission shall determine, based on information provided by the North Carolina Rate Bureau, the employers with an experience rate modifier of 1.5 or greater and shall notify these employers of the applicability of G.S. 95-251 and the potential applicability of G.S. 95-252.

(b) Within 60 days of notification by the ~~Commissioner~~ Employment Safety and Security Commission, the employer shall certify on forms provided by the ~~Commissioner~~ Employment Safety and Security Commission that he meets the requirements of G.S. 95-251 and, if applicable, the requirements of G.S. 95-252.

(c) The ~~Commissioner~~ Employment Safety and Security Commission shall notify an employer when his experience rate modifier falls below 1.5. An employer subject to the provisions of G.S. 95-252 shall notify the ~~Commissioner~~ Employment Safety and Security Commission if he the employer no longer employs 11 or more employees and has discontinued or will discontinue the safety and health committee."

**SECTION 39.** G.S. 95-256 reads as rewritten:

**"§ 95-256. Penalties.**

(a) The ~~Commissioner~~ Employment Safety and Security Commission may levy a civil penalty, not to exceed the amounts listed as follows, for a violation of this Article:

Employers with 10 or less employees	\$ 2,000
Employers with 11-50 employees	\$ 5,000
Employers with 51-100 employees	\$10,000



1 created pursuant to G.S. 96-20, and the Unemployment Insurance Division. The Commission  
2 shall have at least one division pertaining to employee safety and health.

3 (b1) Each division shall be responsible for the discharge of its distinctive functions. Each  
4 division shall be a separate administrative unit with respect to personnel and duties, except  
5 insofar as the Commission may find that such separation is impracticable. Notwithstanding any  
6 other provision of this Chapter, administrative organization of the agency shall be in  
7 accordance with that which the Commission finds most desirable in order to perform the duties  
8 and functions of the agency.

9 (b2) The Governor shall appoint one Chief Deputy Commissioner who shall be  
10 responsible for employment safety and health enforcement.

11 (c) Salaries. – **(Effective until appointment of next chairman of the Employment**  
12 **Security Commission)** The chairman of the Employment Safety and Security Commission of  
13 North Carolina, appointed by the Governor, shall be paid from the Employment Security  
14 Administration Fund a salary payable on a monthly basis, which salary shall be fixed by the  
15 General Assembly in the Current Operations Appropriations Act; and the members of the  
16 Commission, other than the chairman, shall each receive the same amount per diem for their  
17 services as is provided for the members of other State boards, commissions, and committees  
18 who receive compensation for their services as such, including necessary time spent in  
19 traveling to and from his place of residence within the State to the place of meeting while  
20 engaged in the discharge of the duties of his office and his actual traveling expenses, the same  
21 to be paid from the aforesaid fund. Notwithstanding G.S. 138-4, the chairman of the  
22 Employment Security Commission shall not accrue longevity pay.

23 (c) Salaries. – **(Effective upon the appointment of the next Chairman of the**  
24 **Employment Security Commission)** The chairman of the Employment Safety and Security  
25 Commission of North Carolina, appointed by the Governor, shall be paid from the Employment  
26 Security Administration Fund a salary payable on a monthly basis, which salary shall be the  
27 same as the salary fixed by the General Assembly in the Current Operations Appropriations Act  
28 for the Secretary of Commerce, and the members of the Commission, other than the chairman,  
29 shall each receive the same amount per diem for their services as is provided for the members  
30 of other State boards, commissions, and committees who receive compensation for their  
31 services as such, including necessary time spent in traveling to and from his place of residence  
32 within the State to the place of meeting while engaged in the discharge of the duties of his  
33 office and his actual traveling expenses, the same to be paid from the aforesaid fund.

34 (d) Quorum. – The chairman or his designee and three members of the Commission  
35 shall constitute a quorum."

36 **SECTION 43.** G.S. 96-8 reads as rewritten:

37 "(2) 'Commission' means the Employment Safety and Security Commission  
38 established by this Chapter.

39 . . .

40 (22) Average Weekly Insured Wage. – "Average weekly insured wage" is the  
41 quotient obtained by dividing the total of the wages, as defined in  
42 G.S. 96-8(12) and (13), reported by all insured employers by the monthly  
43 average in insured employment under this Chapter during the immediately  
44 preceding calendar year and further dividing the quotient obtained by 52 to  
45 obtain a weekly rate. (For this computation the data as released annually in  
46 the Employment Safety and Security Commission's publication "North  
47 Carolina Insured Employment and Wage Payment" shall be used). The  
48 quotient thus obtained shall be deemed to be the average weekly wage for  
49 such year."

50 **SECTION 44.** G.S. 96-12.1 reads as rewritten:

51 "**§ 96-12.1. Extended base period for certain job related injuries.**

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

11 **SECTION 45.** G.S. 96-13 reads as rewritten:

12 **"§ 96-13. Benefit eligibility conditions.**

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

- 15 (1) The individual has registered for work at and thereafter has continued to  
16 report at an employment office as directed by the Commission in accordance  
17 with such regulations as the Commission may prescribe;
- 18 (2) The individual has made a claim for benefits in accordance with the  
19 provisions of G.S. 96-15(a);
- 20 (3) The individual is able to work, and is available for work: Provided that,  
21 unless temporarily excused by Commission regulations, no individual shall  
22 be deemed available for work unless he establishes to the satisfaction of the  
23 Commission that he is actively seeking work: Provided further, that an  
24 individual customarily employed in seasonal employment shall, during the  
25 period of nonseasonal operations, show to the satisfaction of the  
26 Commission that such individual is actively seeking employment which such  
27 individual is qualified to perform by past experience or training during such  
28 nonseasonal period: Provided further, however, that no individual shall be  
29 considered available for work for any week not to exceed two in any  
30 calendar year in which the Commission finds that his unemployment is due  
31 to a vacation. In administering this proviso, benefits shall be paid or denied  
32 on a payroll-week basis as established by the employing unit. A week of  
33 unemployment due to a vacation as provided herein means any payroll week  
34 within which the equivalent of three customary full-time working days  
35 consist of a vacation period. For the purpose of this subdivision, any  
36 unemployment which is caused by a vacation period and which occurs in the  
37 calendar year following that within which the vacation period begins shall be  
38 deemed to have occurred in the calendar year within which such vacation  
39 period begins. For purposes of this subdivision, no individual shall be  
40 deemed available for work during any week that the individual tests positive  
41 for a controlled substance if (i) the test is a controlled substance examination  
42 administered under Article 20 of Chapter 95 of the General Statutes, (ii) the  
43 test is required as a condition of hire for a job, and (iii) the job would be  
44 suitable work for the claimant. The employer shall report to the  
45 Commission, in accordance with regulations adopted by the Commission,  
46 each claimant that tests positive for a controlled substance under this  
47 subdivision. An unemployed individual shall not be disqualified for  
48 eligibility for unemployment compensation solely on the basis that the  
49 individual is in school.
- 50 (4) No individual shall be deemed able to work under this subsection during any  
51 week for which that person is receiving or is applying for benefits under any

1 other State or federal law based on his temporary total or permanent total  
2 disability. Provided that if compensation is denied to any individual for any  
3 week under the foregoing sentence and such individual is later determined  
4 not to be totally disabled, such individual shall be entitled to a retroactive  
5 payment of the compensation for each week for which the individual filed a  
6 timely claim for compensation and for which the compensation was denied  
7 solely by reason of the foregoing sentence.

8 (5) The individual has participated in reemployment services, if the Division  
9 referred the individual to these services after determining, through use of a  
10 worker profiling system, that the individual would likely exhaust regular  
11 benefits and would need reemployment services to make a successful  
12 transition to new employment, unless the individual establishes justifiable  
13 cause for failing to participate in the services.

14 (6) An unemployed individual shall not be disqualified for eligibility for  
15 unemployment compensation benefits solely on the basis that the individual  
16 is only available for part-time work. If an individual restricts his or her  
17 eligibility to part-time work, the individual may be considered able and  
18 available to work if it is determined that all the following conditions exist:

19 a. The claimant's monetary eligibility is based predominately on wages  
20 from part-time work.

21 b. The claimant is actively seeking and is willing to accept work under  
22 essentially the same conditions as existed while the claimant's  
23 reported wages were accrued.

24 c. The claimant imposes no other restriction and is in a labor market in  
25 which a reasonable demand exists for part-time service.

26 This subdivision shall not be construed to amend subdivision (3) of this  
27 subsection as it applies to students or G.S. 96-16 as it applies to seasonal  
28 workers.

29 (b) (1) The payment of benefits to any individual based on services for nonprofit  
30 organizations, hospitals, or State hospitals and State institutions of higher  
31 education, other institutions of higher education, or secondary schools and  
32 subdivisions of secondary schools subject to this Chapter shall be in the  
33 same manner and under the same conditions of the laws of this Chapter as  
34 applied to individuals whose benefit rights are based on other services  
35 subject to this Chapter. Except that with respect to services in the  
36 educational institutions listed above:

37 a. In an instructional, research, or principal administrative capacity,  
38 compensation shall not be payable based on such services for any  
39 week commencing during the period between two successive  
40 academic years or terms, or, when an agreement provides instead for  
41 a similar period between two regular but not successive terms, during  
42 that period, to any individual if he performs such services in the first  
43 of the academic years or terms and if there is a contract or reasonable  
44 assurance that the individual will perform services in any such  
45 capacity for any educational institution in the second of the academic  
46 years or terms; and,

47 b. In any other capacity for an educational institution:

48 1. Compensation shall be denied on the basis of such services  
49 for any week which commences during a period between two  
50 successive academic years or terms if the individual performs  
51 such services in the first of the academic years or terms and

1 there is a reasonable assurance that the individual will  
2 perform such services in the second of the academic years or  
3 terms, except that

4 2. If compensation is denied to any individual for any week  
5 under subclause 1 and the individual was not offered an  
6 opportunity to perform such services for the educational  
7 institution for the second of the academic years or terms, the  
8 individual shall be entitled to a retroactive payment of the  
9 compensation for each week for which the individual filed a  
10 timely claim for compensation and for which compensation  
11 was denied solely by reason of subclause 1; and,

12 c. With respect to any services described in clause a or b, compensation  
13 payable on the basis of such services shall be denied to any  
14 individual for any week which commences during an established and  
15 customary vacation period or holiday recess, and there is a  
16 reasonable assurance that such individual will perform such services  
17 in the period immediately following the vacation period or holiday  
18 recess; and,

19 d. With respect to any services described in clause a or b, compensation  
20 on the basis of services in any such capacity shall be denied as  
21 specified in clauses a, b, and c. to any individual who performed such  
22 services in an educational institution while in the employ of an  
23 educational service agency, and for this purpose the term  
24 "educational service agency" means a governmental agency or  
25 governmental entity which is established and operated exclusively  
26 for the purpose of providing such services to one or more educational  
27 institutions; and,

28 e. With respect to any services to which G.S. 96-13(b)(1) applies, if  
29 such services are provided to or on behalf of an educational  
30 institution, compensation shall be denied under the same  
31 circumstances as described in clauses a through d.

32 (2) Repealed by Session Laws 1983, c. 625, s. 5.

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

- 41 (1) The benefits are to be paid for unemployment due directly to a major natural  
42 disaster.
- 43 (2) The President of the United States has declared the disaster pursuant to the  
44 Disaster Relief Act of 1970, 42 U.S.C.A. 4401, et seq.
- 45 (3) The benefits are to be paid to claimants who would have been eligible for  
46 disaster unemployment assistance if they had not been eligible to receive  
47 unemployment insurance benefits with respect to that unemployment.
- 48 (4) The claimant files for a waiver of the waiting period week within 30 days  
49 after the date of notification or mailing of the notice of the right to have the  
50 waiting period week waived. The Employment Safety and Security  
51 Commission, for good cause shown, may at any time in its discretion, with

1 or without motion or notice, order the period enlarged if the request for an  
2 enlargement of time is made before the expiration of the period originally  
3 prescribed or as extended by a previous order. After expiration of the  
4 specified period, the Employment Safety and Security Commission may  
5 permit the act to be done where the failure to act was a result of excusable  
6 neglect.

7 The benefits paid as a result of the waiver of the waiting period week shall not be charged to  
8 the account or accounts of the base period employer or employers in accordance with  
9 G.S. 96-9(c)(2)d. The Employment Safety and Security Commission shall implement  
10 regulations prescribing the procedure for the waiver of the waiting period week in accordance  
11 with G.S. 96-4(b).

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

- 14 (1) The benefits are to be paid for unemployment due directly to a major  
15 industrial disaster that destroys substantially all of the physical facilities of a  
16 manufacturing plant.
- 17 (2) The Governor has acknowledged the disaster through the creation of such  
18 task forces as are needed to coordinate State assistance to the manufacturer  
19 and its employees.
- 20 (3) The Governor has issued an Executive Order directing and authorizing the  
21 Employment Safety and Security Commission to waive the waiting week for  
22 employees of the manufacturer.
- 23 (4) The Employment Safety and Security Commission shall implement  
24 regulations prescribing the procedure for the waiver of the waiting period  
25 week in accordance with G.S. 96-4(b).

26 (d) Benefit entitlement based on services for governmental entities that become subject  
27 to Employment Safety and Security Commission law effective January 1, 1978, will be  
28 administered in the same manner and under the same conditions of the laws of this Chapter as  
29 are applicable to individuals whose benefit rights are based on other service subject to this  
30 Chapter.

31 (e) Benefits shall not be payable to any individual on the basis of any services,  
32 substantially all of which consist of participating in sports or athletic events or training or  
33 preparing to so participate, for any week which commences during the period between two  
34 successive sport seasons (or similar periods) if such individual performs such services in the  
35 first of such seasons (or similar periods) and there is a reasonable assurance that such  
36 individual will perform such services in the latter of such seasons (or similar periods).

- 37 (f) (1) Benefits shall not be payable on the basis of services performed by an alien  
38 unless such alien is an individual who was lawfully admitted for permanent  
39 residence at the time such services were performed, or otherwise was  
40 permanently residing in the United States under color of law at the time such  
41 services were performed, or was lawfully present for purposes of performing  
42 such services (including an alien who is lawfully present in the United States  
43 as a result of the application of the provisions of section 203 (a)(7) or section  
44 212 (d)(5) of the Immigration and Nationality Act). Any data or information  
45 required of individuals applying for benefits to determine whether benefits  
46 are not payable to them because of their alien status shall be uniformly  
47 required from all applicants for benefits. In the case of an individual whose  
48 application for benefits would otherwise be approved, no determination that  
49 compensation to such individual is not payable because of his alien status  
50 shall be made except upon a preponderance of the evidence.

1 (2) An individual who is not a citizen or national of the United States shall not  
2 be deemed available for work under subsection (a)(3) of this section unless  
3 the individual is in satisfactory immigration status under the laws  
4 administered by the United States Department of Justice, Immigration and  
5 Naturalization Service.

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

13 (2) Ineligibility pursuant to the preceding paragraph based on a single  
14 disciplinary suspension shall not be imposed for any claims week beginning  
15 after the tenth consecutive calendar day of the suspension. If at the time a  
16 claim is filed for such a week the individual is still so suspended, the  
17 individual shall be deemed to have been discharged from his work because  
18 of all the acts or omissions that caused his suspension and the issue of  
19 whether that discharge was for disqualifying reasons under G.S. 96-14 shall  
20 then be adjudicated pursuant to G.S. 96-15.

21 (3) Any individual who files a claim for benefits for a week with respect to  
22 which he is ineligible under this subsection is deemed to be attached to his  
23 employer's payroll and any issue concerning separation from work that may  
24 be present under G.S. 96-14 shall be held in abeyance until such time as a  
25 claim is filed for a week to which this subsection does not apply."

26 **SECTION 46.** G.S. 96-15.2 reads as rewritten:

27 **"§ 96-15.2. Protection of witness before the Employment Safety and Security**  
28 **Commission.**

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

34 **SECTION 47.** G.S. 96-17(d)(2)c. reads as rewritten:

35 "c. Any amount deducted and withheld under paragraph b. of this  
36 subdivision shall be paid by the Employment Safety and Security  
37 Commission to the appropriate State or local child support  
38 enforcement agency."

39 **SECTION 48.** G.S. 96-19 reads as rewritten:

40 **"§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or**  
41 **invalidation of federal acts; suspension of enforcement provisions contested.**

42 (a) It is the purpose of this Chapter to secure for employers and employees the benefits  
43 of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to  
44 credit on payment of federal taxes, of State contributions, the receipt of federal grants for  
45 administrative purposes, and all other provisions of the said Federal Social Security Act; and it  
46 is intended as a policy of the State that this Chapter and its requirements for contributions by  
47 employers shall continue in force only so long as such employers are required to pay the federal  
48 taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title  
49 III and Title IX of the said Federal Social Security Act shall be declared invalid by the United  
50 States Supreme Court, or if such law be repealed by congressional action so that the federal tax  
51 cannot be further levied, from and after the declaration of such invalidity by the United States

1 Supreme Court, or the repeal of said law by congressional action, as the case may be, no further  
2 levy or collection of contributions shall be made hereunder. The enactment by the Congress of  
3 the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance  
4 Act shall in no way affect the administration of this law except as herein expressly provided.

5 All federal grants and all contributions theretofore collected, and all funds in the treasury by  
6 virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far as may be possible,  
7 under the terms of this Chapter: Provided, however, that contributions already due from any  
8 employer shall be collected and paid into the said fund, subject to such distribution; and  
9 provided further, that the personnel of the State Employment Safety and Security Commission  
10 shall be reduced as rapidly as possible.

11 The funds remaining available for use by the North Carolina Employment Safety and  
12 Security Commission shall be expended, as necessary, in making payment of all such awards as  
13 have been made and are fully approved at the date aforesaid, and the payment of the necessary  
14 costs for the further administration of this Chapter, and the final settlement of all affairs  
15 connected with same. After complete payment of all administrative costs and full payment of  
16 all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall  
17 be refunded to such employer, or his duly authorized assignee: Provided, that the State  
18 employment service, created by Chapter 106, Public Laws of 1935, and transferred by Chapter  
19 1, Public Laws of 1936, Extra Session, and made a part of the Employment Safety and Security  
20 Commission of North Carolina, shall in such event return to and have the same status as it had  
21 prior to enactment of Chapter 1, Public Laws of 1936, Extra Session, and under authority of  
22 Chapter 106, Public Laws of 1935, shall carry on the duties therein prescribed; but, pending a  
23 final settlement of the affairs of the Employment Safety and Security Commission of North  
24 Carolina, the said State employment service shall render such service in connection therewith  
25 as shall be demanded or required under the provisions of this Chapter or the provisions of  
26 Chapter 1, Public Laws of 1936, Extra Session.

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

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

43 **SECTION 49.** G.S. 96-20 reads as rewritten:

44 "**§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director;**  
45 **employees.**

46 The Employment Service Division of the Employment Safety and Security Commission  
47 shall establish and maintain free public employment offices in such number and in such places  
48 as may be necessary for the proper administration of this Chapter, and for the purpose of  
49 performing such duties as are within the purview of the act of Congress entitled "An act to  
50 provide for the establishment of a national employment system and for cooperation with the  
51 states in the promotion of such system and for other purposes," approved June 6, 1933, (48

1 Stat., 113; U.S.C., Title 29, section 49(c), as amended). The said Division shall be administered  
2 by a full-time salaried director. The Employment Security Commission shall be charged with  
3 the duty to cooperate with any official or agency of the United States having powers or duties  
4 under the provisions of the said act of Congress, as amended, and to do and perform all things  
5 necessary to secure to this State the benefits of the said act of Congress, as amended, in the  
6 promotion and maintenance of a system of public employment offices. The provisions of the  
7 said act of Congress, as amended, are hereby accepted by this State, in conformity with section  
8 4 of said act, and this State will observe and comply with the requirements thereof. The  
9 Employment Safety and Security Commission is hereby designated and constituted the agency  
10 of this State for the purpose of said act. The Commission is directed to appoint the director,  
11 other officers, and employees of the Employment Service Division."

12 **SECTION 50.** G.S. 96-29 reads as rewritten:

13 **"§ 96-29. Openings listed by State agencies.**

14 Every State agency shall list with the Employment Safety and Security Commission of  
15 North Carolina every job opening occurring within the agency which opening the agency  
16 wishes filled and which will not be filled solely by promotion or transfer from within the  
17 existing State government work force. The listing shall include a brief description of the duties  
18 and salary range and shall be filed with the Commission within 30 days after the occurrence of  
19 the opening. The State agency may not fill the job opening for at least 21 days after the listing  
20 has been filed with the Commission. The listing agency shall report to the Commission the  
21 filling of any listed opening within 15 days after the opening has been filled.

22 The Employment Safety and Security Commission may act to waive the 21-day listing  
23 period for job openings in job classifications declared to be in short supply by the State  
24 Personnel Commission, upon the request of a State agency, if the 21-day listing requirement for  
25 these classifications hinders the agency in providing essential services."

26 **SECTION 51.** G.S. 96-31 reads as rewritten:

27 **"§ 96-31. Definitions.**

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

- 29 (1) "CFS" means the common follow-up information management system  
30 developed by the Employment Safety and Security Commission of North  
31 Carolina as authorized under this Article.  
32 (2) "~~ESC~~" "ESSC" means the Employment Safety and Security Commission of  
33 North Carolina.  
34 (3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).  
35 (4) "State job training, education, and placement program" or "State-funded  
36 program" means a program operated by a State or local government agency  
37 or entity and supported in whole or in part by State or federal funds, that  
38 provides job training and education or job placement services to program  
39 participants. The term does not include on-the-job training provided to  
40 current employees of the agency or entity for the purposes of professional  
41 development."

42 **SECTION 52.** G.S. 96-32 reads as rewritten:

43 **"§ 96-32. Common follow-up information management system created.**

44 (a) The Employment Safety and Security Commission of North Carolina shall develop,  
45 implement, and maintain a common follow-up information management system for tracking the  
46 employment status of current and former participants in State job training, education, and  
47 placement programs. The system shall provide for the automated collection, organization,  
48 dissemination, and analysis of data obtained from State-funded programs that provide job  
49 training and education and job placement services to program participants. In developing the  
50 system, the ~~ESC~~ Employment Safety and Security Commission shall ensure that data and  
51 information collected from State agencies is confidential, not open for general public

1 inspection, and maintained and disseminated in a manner that protects the identity of individual  
2 persons from general public disclosure.

3 (b) The ~~ESC~~ Employment Safety and Security Commission shall adopt procedures and  
4 guidelines for the development and implementation of the CFS authorized under this section.

5 (c) Based on data collected under the CFS, the ~~ESC~~ Employment Safety and Security  
6 Commission shall evaluate the effectiveness of job training, education, and placement  
7 programs to determine if specific program goals and objectives are attained, to determine  
8 placement and completion rates for each program, and to make recommendations regarding the  
9 continuation of State funding for programs evaluated."

10 **SECTION 53.** G.S. 96-33 reads as rewritten:

11 **"§ 96-33. State agencies required to provide information and data.**

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

18 (b) Each agency or entity required to report information and data to the ~~ESC~~  
19 Employment Safety and Security Commission under this Article shall maintain true and  
20 accurate records of the information and data requested by the ~~ESC~~ Commission. The records  
21 shall be open to ~~ESC~~ Employment Safety and Security Commission inspection and copying at  
22 reasonable times and as often as necessary. Each agency or entity shall further provide, upon  
23 request by ~~ESC~~ the Commission, sworn or unsworn reports with respect to persons employed  
24 or trained by the agency or entity, as deemed necessary by the ~~ESC~~ Commission to carry out  
25 the purposes of this Article. Information obtained by the ~~ESC~~ Commission from the agency or  
26 entity shall be held by ~~ESC~~ the Commission as confidential and shall not be published or open  
27 to public inspection other than in a manner that protects the identity of individual persons and  
28 employers."

29 **SECTION 54.** 96-35 reads as rewritten:

30 **"§ 96-35. Reports on common follow-up system activities.**

31 (a) The Employment Safety and Security Commission of North Carolina shall present  
32 annually by May 1 to the General Assembly and to the Governor a report of CFS activities for  
33 the preceding calendar year. The report shall include information on and evaluation of job  
34 training, education, and placement programs for which data was reported by State and local  
35 agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year  
36 data.

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

40  
41 **PART VII. OTHER CONFORMING CHANGES**

42 **SECTION 55.** G.S. 7A-343.1 reads as rewritten:

43 **"§ 7A-343.1. Distribution of copies of the appellate division reports.**

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

- 47 Governor, Office of the 1
- 48 Lieutenant Governor, Office of the 1
- 49 Secretary of State, Department of the 2
- 50 State Auditor, Department of the 1
- 51 Treasurer, Department of the State 1

1	Superintendent of Public Instruction	1
2	Office of the Attorney General	11
3	State Bureau of Investigation	1
4	Agriculture and Consumer Services, Department of	1
5	Labor, Department of	1
6	Insurance, Department of	1
7	Budget Bureau, Department of Administration	1
8	Property Control, Department of Administration	1
9	State Planning, Department of Administration	1
10	Environment and Natural Resources, Department of	1
11	Revenue, Department of	1
12	Health and Human Services, Department of	1
13	Juvenile Justice and Delinquency Prevention, Department of	1
14	Commission for the Blind	1
15	Transportation, Department of	1
16	Motor Vehicles, Division of	1
17	Utilities Commission	8
18	Industrial Commission	11
19	State Personnel Commission	1
20	Office of State Personnel	1
21	Office of Administrative Hearings	2
22	Community Colleges, Department of	38
23	Employment <u>Safety and Security</u> Commission	1
24	Commission of Correction	1
25	Parole Commission	1
26	Archives and History, Division of	1
27	Crime Control and Public Safety, Department of	2
28	Cultural Resources, Department of	3
29	Legislative Building Library	2
30	Justices of the Supreme Court	1 ea.
31	Judges of the Court of Appeals	1 ea.
32	Judges of the Superior Court	1 ea.
33	Clerks of the Superior Court	1 ea.
34	District Attorneys	1 ea.
35	Emergency and Special Judges of the Superior Court	1 ea.
36	Supreme Court Library	AS MANY AS
37		REQUESTED
38	Appellate Division Reporter	1
39	University of North Carolina, Chapel Hill	71
40	University of North Carolina, Charlotte	1
41	University of North Carolina, Greensboro	1
42	University of North Carolina, Asheville	1
43	North Carolina State University, Raleigh	1
44	Appalachian State University	1
45	East Carolina University	1
46	Fayetteville State University	1
47	North Carolina Central University	17
48	Western Carolina University	1
49	Duke University	17
50	Davidson College	2
51	Wake Forest University	25

1	Lenoir Rhyne College	1
2	Elon College	1
3	Campbell University	25
4	Federal, Out-of-State and Foreign Secretary of State	1
5	Secretary of Defense	1
6	Secretary of Health, Education and Welfare	1
7	Secretary of Housing and Urban Development	1
8	Secretary of Transportation	1
9	Attorney General	1
10	Department of Justice	1
11	Internal Revenue Service	1
12	Veterans' Administration	1
13	Library of Congress	5
14	Federal Judges resident in North Carolina	1 ea.
15	Marshal of the United States Supreme Court	1
16	Federal District Attorneys resident in North Carolina	1 ea.
17	Federal Clerks of Court resident in North Carolina	1 ea.
18	Supreme Court Library exchange list	1
19	Cherokee Supreme Court, Eastern Band of Cherokee Indians	1
20		

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 56.** G.S. 8-45.3 reads as rewritten:

**"§ 8-45.3. Photographic reproduction of records of Department of Revenue and Employment Safety and Security Commission.**

(a) The State Department of Revenue is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the Department, including tax returns required by law to be made to the Department, and said photographs, photocopies, or microphotocopies, when certified by the Department as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings and matters as the originals thereof would have been.

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

(b) The provisions of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department."

**SECTION 57.** G.S. 52C-5-501 reads as rewritten:

**"§ 52C-5-501. Employer's receipt of income-withholding order of another state.**

(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a

1 petition or comparable pleading or registering the order with a tribunal of this State. In the  
2 event that an obligor is receiving unemployment compensation benefits from the North  
3 Carolina Employment Safety and Security Commission, in accordance with G.S. 96-17, an  
4 income-withholding order issued in another state may be sent to the Employment Safety and  
5 Security Commission without first filing a petition or comparable pleading or registering the  
6 order with a tribunal of this State. Upon receipt of the order, the employer or the Employment  
7 Safety and Security Commission shall:

- 8 (1) Treat an income-withholding order issued in another state which appears  
9 regular on its face as if it had been issued by a tribunal of this State;
  - 10 (2) Immediately provide a copy of the order to the obligor; and
  - 11 (3) Distribute the funds as directed in the withholding order. The Employment  
12 Safety and Security Commission shall not withhold an amount to exceed  
13 twenty-five percent (25%) of the unemployment compensation benefits.
- 14 (b) Repealed by Session Laws 1997-433, s. 10.8."

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

16 "**§ 58-89A-120. Unemployment taxes; payroll.**

17 A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and  
18 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and  
19 collection of unemployment insurance contributions or the assignment of discrete employer  
20 numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and  
21 96-8(6). The Employment Safety and Security Commission shall cooperate with the  
22 Commissioner in the investigation of applicants and licensees and shall provide the  
23 Commissioner with access to all relevant records and data in the custody of the Employment  
24 Safety and Security Commission."

25 **SECTION 59.** G.S. 84-5(a) reads as rewritten:

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

42 To further clarify the foregoing provisions of this section as they apply to corporations  
43 which are authorized and licensed to act in a fiduciary capacity:

- 44 (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
  - 45 a. Draw wills or trust instruments; provided that this shall not be  
46 construed to prohibit an employee of such corporation from  
47 conferring and cooperating with an attorney who is not a salaried  
48 employee of the corporation, at the request of such attorney, in  
49 connection with the attorney's performance of services for a client  
50 who desires to appoint the corporation executor or trustee or  
51 otherwise to utilize the fiduciary services of the corporation.

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

- 1 a. The initial opening and inventorying of safe deposit boxes in  
2 connection with the administration of an estate for which the  
3 corporation is executor or administrator shall be handled by, or with  
4 the advice of, an attorney, not a salaried employee of the corporation,  
5 retained by the corporation to perform legal services required in  
6 connection with that particular estate.
- 7 b. The furnishing of a beneficiary with applicable portions of a testator's  
8 will relating to such beneficiary shall, if accompanied by any legal  
9 advice or opinion, be handled by, or with the advice of, an attorney,  
10 not a salaried employee of the corporation, retained by the  
11 corporation to perform legal services required in connection with that  
12 particular estate or matter.
- 13 c. In matters involving estate and inheritance taxes and federal and  
14 State income taxes, the corporation shall not execute waivers of  
15 statutes of limitations without the advice of an attorney, not a salaried  
16 employee of the corporation, retained by the corporation to perform  
17 legal services in connection with that particular estate or matter.
- 18 d. An attorney, not a salaried employee of the corporation, retained by  
19 the corporation to perform legal services required in connection with  
20 an estate or trust shall be furnished copies of inventories and  
21 accounts proposed for filing with any court and proposed federal  
22 estate and North Carolina inheritance tax returns and, on request,  
23 copies of proposed income and intangibles tax returns, and shall be  
24 afforded an opportunity to advise and counsel the corporate fiduciary  
25 concerning them prior to filing."

26 **SECTION 60.** G.S. 95-25.3 reads as rewritten:

27 "(d) The Commissioner, in order to prevent curtailment of opportunities for employment  
28 of the economically disadvantaged and the unemployed, may, by regulation, establish a wage  
29 rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect  
30 under subsection (a) which shall apply to all persons (i) who have been unemployed for at least  
31 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are,  
32 receiving Work First Family Assistance or who are receiving supplemental security benefits  
33 under Title XVI of the Social Security Act.

34 Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for  
35 such subminimum wage shall be issued by the Employment Safety and Security Commission.

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

38 **SECTION 61.** The Reviser of Statutes shall make conforming changes to the  
39 statutes listed in this section, as appropriate and in accordance with this act:

- 40 (a) G.S. 105-259 Secrecy required of officials; penalty for violation.  
41 (b) G.S. 105-296 Powers and duties of assessor.  
42 (c) G.S. 105A-8 § 105A-8. State agency notice; hearing; decision; and refund of  
43 setoff.  
44 (d) G.S. 105A-9 Appeals from hearings.  
45 (e) G.S. 108A-29 First Stop Employment Assistance; priority for employment  
46 services.  
47 (f) G.S. 110-129.2 State Directory of New Hires established; employers required to  
48 report; civil penalties for noncompliance; definitions.  
49 (g) G.S. 110-136.2 Use of unemployment compensation benefits for child support.  
50 (h) G.S. 113-276 Exemptions and exceptions to license and permit requirements.  
51 (i) G.S. 132-3 Destruction of records regulated.

- 1 (j) G.S. 135-16 Employees transferred to North Carolina State Employment Service  
2 by act of Congress.
- 3 (k) G.S. 143-341 Powers and duties of Department.
- 4 (l) G.S. 143B-181 Governor's Advisory Council on Aging—members; selection;  
5 quorum; compensation.
- 6 (m) G.S. 143B-407 North Carolina State Commission of Indian Affairs – membership;  
7 term of office; chairman; compensation.
- 8 (n) G.S. 143B-417 North Carolina Internship Council – creation; powers and duties.
- 9 (o) G.S. 143B-426.25 North Carolina Farmworker Council—creation; membership;  
10 meetings.
- 11 (p) G.S. 143B-431 Department of Commerce – functions.
- 12 (q) G.S. 143B-433 Department of Commerce – organization.
- 13 (r) G.S. 143B-434 Economic Development Board – creation; duties; membership.
- 14 (s) G.S. 143B-438.10 Commission on Workforce Development.
- 15 (t) G.S. 143B-438.16 Trade Jobs for Success initiative established; funds; program  
16 components and guidelines.
- 17 (u) G.S. 143B-438.17 Reporting.
- 18 (v) G.S. 147-86.1 Pool account for local government unemployment compensation.
- 19 (w) G.S. 150B-1 Policy and scope.
- 20 (x) G.S. 158-7.1 Local development.
- 21 (y) G.S. 165-10 Transfer of veterans' activities.
- 22

## 23 PART VIII. TRANSITION PERIOD

24 **SECTION 62.(a)** A transition period for staffing activities and administrative and  
25 programmatic planning shall begin on July 1, 2009, during which the Commissioner of Labor  
26 shall undertake necessary actions to ensure an orderly and efficient transfer of functions and  
27 personnel on January 1, 2010, including immediately assembling a transition team.  
28 Representatives designated by the Employment Security Commission shall also serve on the  
29 transition team.

30 **SECTION 62.(b)** By October 1, 2009, the Commissioner of Labor and the  
31 Employment Security Commission shall report to the Joint Legislative Commission on  
32 Governmental Operations and to the Fiscal Research Division on the status of the transition  
33 period established by this section.

## 34 PART IX. EFFECTIVE DATES

35 **SECTION 63.** This act is effective when it becomes law, except that Part I through  
36 Part VII of this act become effective January 1, 2010.  
37