

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 15*
Finance Committee Substitute Adopted 2/11/15
House Committee Substitute Favorable 8/6/15
House Committee Substitute #2 Favorable 8/11/15

Short Title: Unemployment Insurance Law Changes.

(Public)

Sponsors:

Referred to:

February 4, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS, AS
3 RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
4 UNEMPLOYMENT INSURANCE, AND TO CONFIRM APPOINTMENTS TO THE
5 BOARD OF REVIEW.

6 The General Assembly of North Carolina enacts:

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

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

11 "Article 5.

12 "Miscellaneous Provisions.

13 **"§ 96-36. Unemployment insurance program integrity; reporting.**

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

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

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

25 a. Government Data Analytics Center (GDAC);

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

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

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

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



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

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

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

15 (1) Metrics regarding unemployment benefits overpayments, improper
16 payments, and fraudulent payments, in terms of both percentage and dollar
17 amount.

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

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

24 a. Type and subcategory of investigations.

25 b. Number of alerts received during the quarter.

26 c. Number of alerts investigated during the quarter.

27 d. Number of false positives.

28 e. Number of dispositions entered.

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

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

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

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

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

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

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

4 PART II. UNEMPLOYMENT INSURANCE LAW CHANGES

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

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

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

13 ...

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

16 SECTION 2.2.(a) G.S. 96-14.9(e) reads as rewritten:

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

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

31 SECTION 2.2.(b) This section becomes effective January 1, 2016, and applies to
32 claims for benefits filed on or after that date.

33 SECTION 2.3.(a) G.S. 96-15(h) reads as rewritten:

34 "(h) Judicial Review. – ~~Any A~~ decision of the Division, ~~in the absence of judicial review~~
35 ~~as herein provided, or in the absence of an interested party filing a request for reconsideration,~~
36 ~~shall become Board of Review becomes final 30 days after the date of notification or mailing~~
37 ~~thereof, whichever is earlier. unless a party to the decision seeks judicial review as provided in~~
38 this subsection. Judicial review shall be is permitted only after a party claiming to be aggrieved
39 by the decision has exhausted his remedies before the Division as provided in this Chapter the
40 remedies provided in this Chapter and has filed a petition for review in the superior court of the
41 county in which he the petitioner resides or has his the county in which the petitioner's principal
42 place of business. business is located. The petition for review shall must explicitly state what
43 exceptions are taken to the decision or procedure of the Division and what relief the petitioner
44 seeks. Within 10 days after the petition is filed with the court, the petitioner shall must serve
45 copies of the petition by personal service or by certified mail, return receipt requested, upon the
46 Division and upon all parties of record to the Division proceedings. The Division must furnish
47 the petitioner the names Names and addresses of the parties shall be furnished to the petitioner
48 ~~by the Division upon request. The Division shall be deemed to be is a party to any judicial~~
49 action involving any of its decisions and may be represented in the judicial action by any
50 qualified attorney who has been designated by it for that purpose. Any questions regarding the
51 requirements of this subsection concerning the service or filing of a petition shall be determined

1 by the superior court. Any party to the Division proceeding may become a party to the review
2 proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any
3 person aggrieved may petition to become a party by filing a motion to intervene as provided in
4 G.S. 1A-1, Rule 24.

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

13 **SECTION 2.3.(b)** This section becomes effective October 1, 2015, and applies to
14 decisions made on or after that date.

15 **SECTION 2.4.(a)** G.S. 96-3 reads as rewritten:

16 "**§ 96-3. Division of Employment Security.**

17 The Division of Employment Security (DES) is created within the Department of
18 Commerce and shall administer the provisions of this Chapter under the supervision of the
19 Assistant Secretary of ~~Commerce~~ through two coordinate sections: the Employment Security
20 Section and the Employment Insurance Section. ~~The Employment Security Section shall~~
21 ~~administer the employment services functions of the Division. The Employment Insurance~~
22 ~~Section shall administer the unemployment taxation and assessment functions of the~~
23 ~~Division.~~Commerce."

24 **SECTION 2.4.(b)** G.S. 96-4(j) reads as rewritten:

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

29 **SECTION 2.4.(c)** G.S. 96-9.15(f) reads as rewritten:

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

38 **SECTION 2.5.(a)** G.S. 1-359 reads as rewritten:

39 "**§ 1-359. Debtors of judgment debtor may satisfy execution.**

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

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

50 **SECTION 2.5.(b)** G.S. 96-10 reads as rewritten:

51 "**§ 96-10. Collection of contributions.**

- 1 ...
2 (b) Collection. –
3 (1) If, after due notice, any employer defaults in any payment of contributions or
4 interest thereon, the amount due shall be collected by civil action in the
5 name of the Division, and the employer adjudged in default shall pay the
6 costs of such action. Civil actions brought under this section to collect
7 contributions or interest thereon from an employer shall be heard by the
8 court at the earliest possible date, and shall be entitled to preference upon the
9 calendar of the court over all other civil actions, except petitions for judicial
10 review under this Chapter and cases arising under the Workers'
11 Compensation Law of this State; or, if any contribution imposed by this
12 Chapter, or any portion thereof, and/or penalties duly provided for the
13 nonpayment thereof shall not be paid within 30 days after the same become
14 due and payable, and after due notice and reasonable opportunity for
15 hearing, the Division, under the hand of the Assistant Secretary, may certify
16 the same to the clerk of the superior court of the county in which the
17 delinquent resides or has property, and additional copies of said certificate
18 for each county in which the Division has reason to believe the delinquent
19 has property located. If the amount of a delinquency is less than fifty dollars
20 (\$50.00), the Division may not certify the amount to the clerk of court until a
21 field tax auditor or another representative of the Division personally
22 contacts, or unsuccessfully attempts to personally contact, the delinquent and
23 collect the amount due. A certificate or a copy of a certificate forwarded to
24 the clerk of the superior court shall immediately be docketed and indexed on
25 the cross index of judgments, and from the date of such docketing shall
26 constitute a preferred lien upon any property which said delinquent may own
27 in said county, with the same force and effect as a judgment rendered by the
28 superior court. The Division shall forward a copy of said certificate to the
29 sheriff or sheriffs of such county or counties, or to a duly authorized agent of
30 the Division, and when so forwarded and in the hands of such sheriff or
31 agent of the Division, shall have all the force and effect of an execution
32 issued to such sheriff or agent of the Division by the clerk of the superior
33 court upon a judgment of the superior court duly docketed in said county.
34 Provided, however, the Division may in its discretion withhold the issuance
35 of said certificate or execution to the sheriff or agent of the Division for a
36 period not exceeding 180 days from the date upon which the original
37 certificate is certified to the clerk of superior court. The Division is further
38 authorized and empowered to issue alias copies of said certificate or
39 execution to the sheriff or sheriffs of such county or counties, or to a duly
40 authorized agent of the Division in all cases in which the sheriff or duly
41 authorized agent has returned an execution or certificate unsatisfied; when so
42 issued and in the hands of the sheriff or duly authorized agent of the
43 Division, such alias shall have all the force and effect of an alias execution
44 issued to such sheriff or duly authorized agent of the Division by the clerk of
45 the superior court upon a judgment of the superior court duly docketed in
46 said county. Provided, however, that notwithstanding any provision of this
47 subsection, upon filing one written notice with the Division, the sheriff of
48 any county shall have the sole and exclusive right to serve all executions and
49 make all collections mentioned in this subsection and in such case no agent
50 of the Division shall have the authority to serve any executions or make any
51 collections therein in such county. A return of such execution, or alias

1 execution, shall be made to the Division, together with all moneys collected
 2 thereunder, and when such order, execution, or alias is referred to the agent
 3 of the Division for service the said agent of the Division shall be vested with
 4 all the powers of the sheriff to the extent of serving such order, execution or
 5 alias and levying or collecting thereunder. The agent of the Division to
 6 whom such order or execution is referred shall give a bond not to exceed
 7 three thousand dollars (\$3,000) approved by the Division for the faithful
 8 performance of such duties. The liability of said agent shall be in the same
 9 manner and to the same extent as is now imposed on sheriffs in the service
 10 of executions. If any sheriff of this State or any agent of the Division who is
 11 charged with the duty of serving executions shall willfully fail, refuse, or
 12 neglect to execute any order directed to him by the said Division and within
 13 the time provided by law, the official bond of such sheriff or of such agent of
 14 the Division shall be liable for the contributions, penalty, interest, and costs
 15 due by the employer. Any judgment that is executable and allowed under
 16 this section shall be subject to attachment and garnishment under
 17 G.S. 1-359(b) in payment of unpaid taxes that are due from the employer
 18 and collectable under this Article.

19 ...

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

37"

38 **SECTION 2.6.** G.S. 96-14.9 reads as rewritten:

39 **"§ 96-14.9. Weekly certification.**

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

- 45 (1) File a claim for benefits.
- 46 (2) Report ~~at an employment office~~ as requested by the ~~Division~~ Division and
 47 present valid photo identification meeting the requirements of subsection (k)
 48 of this section.
- 49 (3) Meet the work search requirements of subsection (b) of this section.

50 ...

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

- 3 (1) A drivers license, learner's permit, provisional license, or nonoperator's
 4 identification card issued by North Carolina, another state, the District of
 5 Columbia, United States territory, or United States commonwealth.
- 6 (2) A United States passport.
- 7 (3) A United States military identification card.
- 8 (4) A Veterans Identification Card issued by the United States Department of
 9 Veterans Affairs.
- 10 (5) A tribal enrollment card issued by a federally recognized tribe.
- 11 (6) Any other document that the Division determines adequately identifies the
 12 individual and that is issued by the United States, any state, the District of
 13 Columbia, United States territory, or United States commonwealth.
- 14 (7) A traveler card issued by the U.S. Department of Homeland Security, such
 15 as the NEXUS SENTRI and FAST CARDS."

16 **SECTION 2.7.** Section 1.10(c) of S.L. 2011-401 reads as rewritten:

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

21 **SECTION 2.8.(a)** G.S. 96-14.4 is repealed.

22 **SECTION 2.8.(b)** G.S. 96-14.3 reads as rewritten:

23 "**§ 96-14.3. ~~Minimum and maximum duration~~Duration of benefits.**

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

35 Seasonal Adjusted	Minimum Number	Maximum Number
36 Unemployment Rate	of Weeks	of Weeks
37 Less than or equal to 5.5%	5	12
38 Greater than 5.5% up to 6%	6	13
39 Greater than 6% up to 6.5%	7	14
40 Greater than 6.5% up to 7%	8	15
41 Greater than 7% up to 7.5%	9	16
42 Greater than 7.5% up to 8%	10	17
43 Greater than 8% up to 8.5%	11	18
44 Greater than 8.5% up to 9%	12	19
45 Greater than 9%	13	20

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

49 **SECTION 2.8.(c)** G.S. 96-14.12(b) reads as rewritten:

50 "(b) Duration of Benefits. – This subsection applies to an individual and the spouse of an
 51 individual who is unemployed based on services performed for a corporation in which the

1 individual held five percent (5%) or more of the outstanding shares of the voting stock of the
 2 corporation. The maximum number of weeks an individual or an individual's spouse may
 3 receive benefits is ~~limited to the lesser of six weeks or the applicable weeks determined under~~
 4 ~~G.S. 96-14.4 weeks.~~"

5 **SECTION 2.8.(d)** G.S. 96-16(f) reads as rewritten:

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

33 **SECTION 2.8.(e)** This section becomes effective July 1, 2015.

34 **SECTION 2.9.** G.S. 96-15 reads as rewritten:

35 "**§ 96-15. Claims for benefits.**

36 ...

37 (b) ...

- 38 (2) Adjudication. – When a protest is made by the claimant to the initial or
 39 monetary determination, or a question or issue is raised or presented as to the
 40 eligibility of a claimant, or whether any disqualification should be imposed,
 41 or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be
 42 referred to an adjudicator. The adjudicator may consider any matter,
 43 document or statement deemed to be pertinent to the issues, including
 44 telephone conversations, and after such consideration shall render a
 45 conclusion as to the claimant's benefit entitlements. The adjudicator shall
 46 notify the claimant and all other interested parties of the conclusion reached.
 47 The conclusion of the adjudicator shall be deemed the final decision of the
 48 Division unless within 30 days after the date of notification or mailing of the
 49 conclusion, whichever is earlier, a written appeal is filed pursuant to rules
 50 adopted by the Division. The Division shall be deemed an interested party

1 for such purposes and may remove to itself or transfer to an appeals referee
 2 the proceedings involving any claim pending before an adjudicator.

3 Provided, any interested employer shall be allowed 14 days from the
 4 mailing or delivery of the notice of the filing of a claim against the
 5 employer's account, whichever first occurs, to file with the Division its
 6 protest of the claim in order to have the claim referred to an adjudicator for a
 7 decision on the question or issue raised. Any protest filed must contain a
 8 basis for the protest and supporting statement of facts, and the protest may
 9 not be amended after the 14-day period from the mailing or delivery of the
 10 notice of filing of a claim has expired. ~~A copy of the notice of the filing shall~~
 11 ~~be sent contemporaneously to the employer by telefacsimile transmission if a~~
 12 ~~fax number is on file.~~ No payment of benefits shall be made by the Division
 13 to a claimant until one of the following occurs:

- 14 a. The employer has filed a timely protest to the claim.
- 15 b. The 14-day period for the filing of a protest by the employer has
- 16 expired.
- 17 c. A determination under this subdivision has been made.

18 Provided further, no question or issue may be raised or presented by the
 19 Division as to the eligibility of a claimant, or whether any disqualification
 20 should be imposed, after 45 days from the first day of the first week after the
 21 question or issue occurs with respect to which week an individual filed a
 22 claim for benefits. None of the provisions of this subsection shall have the
 23 force and effect nor shall the same be construed or interested as repealing
 24 any other provisions of G.S. 96-18.

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

29 ...
 30 (d1) No continuance shall be granted except upon application to the Division, the appeals
 31 referee, or other authority assigned to make the decision in the matter to be continued. A
 32 continuance may be granted only ~~for good cause shown and~~ upon such terms and conditions as
 33 ~~justice may require. Good cause~~ the Division by rule shall provide. Acceptable grounds
 34 granting a continuance shall include, but not be limited to, those instances when a party to the
 35 proceeding, a witness, or counsel of record has an obligation of service to the State, such as
 36 service as a member of the North Carolina General Assembly, or an obligation to participate in
 37 a proceeding in a court of greater jurisdiction.

38"

39 **SECTION 2.10.(a)** G.S. 96-14.1(b) reads as rewritten:

40 "(b) Valid Claim. – To obtain benefits, an individual must file a valid claim for
 41 unemployment ~~benefits and~~ benefits, register for work, work, and have a weekly benefit
 42 amount calculated pursuant to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00).
 43 An individual must serve a one-week waiting period for each claim filed. A valid claim is one
 44 that meets the employment and wage standards in this subsection for the individual's base
 45 period. A valid claim for a second benefit year is one that meets the employment and wage
 46 standards in this subsection since the beginning date of the prior benefit year and before the
 47 date the new benefit claim is filed:

- 48 (1) Employment. – The individual has been paid wages in at least two quarters
- 49 of the individual's base period.
- 50 (2) Wages. – The individual has been paid wages totaling at least six times the
- 51 average weekly insured wage during the individual's base period. If an

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

6 **SECTION 2.10.(b)** This section is effective when it becomes law and applies to
7 benefit claims filed on or after October 4, 2015.

9 **PART III. DIVISION OF EMPLOYMENT SECURITY BOARD OF REVIEW**

10 **SECTION 3.1.(a)** Notwithstanding the appointment provisions in G.S. 96-4(b) and
11 in G.S. 96-15.3, as enacted by this act, and to achieve the staggered terms provided in
12 G.S. 96-15.3, as enacted by this act, Jeanette Doran, appointed by the Governor in December
13 2013 to serve on the Board of Review as the member that represents the general public, is
14 confirmed to serve on the Board of Review for the term beginning upon appointment and
15 expiring on June 30, 2015. In accordance with G.S. 96-15.3, as enacted by this act, the term
16 beginning July 1, 2015, will expire on June 30, 2019.

17 **SECTION 3.1.(b)** Notwithstanding the appointment provisions in G.S. 96-15.3, as
18 enacted by this act, Jeanette Doran, appointed by the Governor in December 2013 to serve on
19 the Board of Review as the member that represents the general public, is confirmed to serve on
20 the Board of Review for the term beginning July 1, 2015, and expiring on June 30, 2019.

21 **SECTION 3.1.(c)** Notwithstanding the appointment provisions in G.S. 96-4(b) and
22 in G.S. 96-15.3, as enacted by this act, and to achieve the staggered terms provided in
23 G.S. 96-15.3, as enacted by this act, Keith Holliday, appointed by the Governor in December
24 2013 to serve on the Board of Review as the member that represents employers, is confirmed to
25 serve on the Board of Review for the term beginning upon appointment and expiring on June
26 30, 2016. In accordance with G.S. 96-15.3, as enacted by this act, the term beginning on July 1,
27 2016, will expire on June 30, 2020.

28 **SECTION 3.1.(d)** Notwithstanding the appointment provisions in G.S. 96-4(b) and
29 in G.S. 96-15.3, as enacted by this act, Stanley Campbell, appointed by the Governor in
30 December 2013 to serve on the Board of Review as the member that represents employees, is
31 confirmed to serve on the Board of Review for the term beginning upon appointment and
32 expiring on June 30, 2017. In accordance with G.S. 96-15.3, as enacted by this act, the term
33 beginning on July 1, 2017, will expire on June 30, 2021.

34 **SECTION 3.2.(a)** The following decisions in an appeal by a party to a decision of
35 an appeals referee or hearing officer under Chapter 96 of the General Statutes are hereby
36 validated and given the same legal effect as if those decisions had been issued by the Board of
37 Review (BOR):

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

42 **SECTION 3.2.(b)** This section is effective when it becomes law and applies to
43 decisions rendered on or after November 1, 2011.

44 **SECTION 3.3.(a)** G.S. 96-4(b) and Section 21 of S.L. 2013-224 are repealed.

45 **SECTION 3.3.(b)** Article 2D of Chapter 96 of the General Statutes is amended by
46 adding a new section to read:

47 **"§ 96-15.3. Board of Review.**

48 (a) **Purpose.** – The Board of Review (BOR) is created to determine appeals policies and
49 procedures and to hear appeals arising from the decisions and determinations of the Division.
50 The Department of Commerce must assign staff to the BOR. The BOR and its staff must
51 perform their job responsibilities independent of the Governor, the General Assembly, the

1 Department, and the Division and in accordance with any written guidance promulgated and
2 issued by the U.S. Department of Labor.

3 (b) Members. – The BOR consists of three members appointed by the Governor and
4 subject to confirmation by the General Assembly as provided in subsection (c) of this section.
5 One member must be classified as representative of employees, one member must be classified
6 as representative of employers, and one member must be classified as representative of the
7 general public. The member appointed to represent the general public will serve as chair of the
8 BOR and must be a licensed attorney in this State.

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

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

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

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

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

50 (e) Legislative Appointments. – If the Governor fails to timely submit the name of an
51 individual to be appointed to the BOR as provided in this section, then the General Assembly

1 may appoint an individual to fill the vacancy in accordance with G.S. 120-121 and the
2 provisions of this subsection. If the vacancy occurs in an odd-numbered year, the appointment
3 is made upon the recommendation of the President Pro Tempore of the Senate. If the vacancy
4 occurs in an even-numbered year, the appointment is made upon the recommendation of the
5 Speaker of the House of Representatives."

6 **SECTION 3.4.** The Joint Legislative Program Evaluation Oversight Committee
7 shall include in the 2015-2017 Work Plan for the Program Evaluation Division of the General
8 Assembly a study of the value provided to the State by the Board of Review (BOR). The
9 Division shall report its findings and recommendations to the Joint Legislative Program
10 Evaluation Oversight Committee and to the Joint Legislative Oversight Committee on
11 Unemployment Insurance by March 1, 2016. The study should include the following:

- 12 (1) A cost-benefit analysis of the State provision of a higher level of appeal of
13 decisions for the Division of Employment Security through the BOR:
 - 14 a. Annual costs of the BOR.
 - 15 b. Number of cases handled annually by the BOR.
 - 16 c. Average time for BOR to process a case.
 - 17 d. Cost per case.
 - 18 e. Number and percentage of BOR decisions differing from the initial
19 decision.
 - 20 f. Average percentage distribution of time BOR staff members spend
21 on BOR tasks and tasks unrelated to BOR.
 - 22 g. Independence of BOR staff from budgetary control, direction, or
23 override by non-BOR agency employees and officers.
- 24 (2) A comparison to other states with BOR functions on the same factors
25 enumerated in subdivision (1) of this section.
- 26 (3) A determination of how the cost of BOR compares to the monetary value
27 derived from the BOR appeals function.
- 28 (4) A determination if BOR resources could be applied more efficiently and
29 effectively to provide equivalent value to the State.
- 30 (5) An identification of noneconomic or nonquantifiable justifications, if any, of
31 a BOR function.
- 32 (6) Any Program Evaluation Division recommendations for administrative or
33 legislative consideration.

34 **PART IV. TAX CHANGES**

35 **SECTION 4.1.(a)** G.S. 96-9.2(c) reads as rewritten:

36 "(c) Contribution Rate for Experience-Rated Employer. – The contribution rate for an
37 experience-rated employer who does not qualify as a beginning employer under subsection (b)
38 of this section is determined in accordance with the table set out below and then rounded to the
39 nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution
40 rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum
41 contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are
42 the total wages reported by all insured employers for the 12-month period ending on ~~July 31~~
43 June 30 preceding the computation date. An employer's experience rating is computed as a
44 reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is
45 the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a
46 lower contribution rate, and a negative ERRP produces a higher contribution rate.
47"

48
49 **SECTION 4.1.(b)** This section is effective when it becomes law and applies to
50 contributions payable for calendar quarters beginning on or after January 1, 2014.

51 **SECTION 4.2.(a)** G.S. 96-11.2 reads as rewritten:

1 **"§ 96-11.2. Allocation of charges to base period employers.**

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

11 **SECTION 4.2.(b)** This section becomes effective January 3, 2016, and applies to
12 claims effective on or after that date. Claims filed prior to January 3 will be charged annually
13 when the benefit year for that claim ends.

14 **SECTION 4.3.** Notwithstanding G.S. 96-9.7(b), the surtax imposed under
15 G.S. 96-9.7 does not apply to the calendar year 2016 if the amount in the State's account in the
16 Unemployment Trust Fund as of March 1, 2016, equals or exceeds one billion dollars
17 (\$1,000,000,000).

18
19 **PART V. EFFECTIVE DATE**

20 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
21 law.