

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 828\*  
Finance Committee Substitute Adopted 6/6/12  
Third Edition Engrossed 6/7/12  
House Committee Substitute Favorable 6/13/12

Short Title: Unemployment Insurance Changes.

(Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

**PART I. CHANGE THE LAW TO CONTINUE THE THREE-YEAR LOOKBACK TRIGGER FOR EXTENDED BENEFITS**

**SECTION 1.(a)** The General Assembly finds that the Governor's Executive Order No. 93, entitled "Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed," was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians. The extension of unemployment benefits was grounded upon amendments to section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (the "1970 Act"), as amended by section 502(b) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Tax Relief Act of 2010").

**SECTION 1.(b)** The General Assembly finds that the Governor's Executive Order No. 113, entitled "Further Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed," was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians nearing the end of a two-month federal extension of unemployment benefits under section 201 of the Temporary Payroll Tax Cut Continuation Act of 2011. That extension, authorized through February 29, 2012, was grounded upon amendments to section 203 of the 1970 Act, as amended by section 502(b) of the Tax Relief Act of 2010.

**SECTION 1.(c)** The General Assembly finds that section 502(b) of the Tax Relief Act of 2010 specifies that the extension of benefits is to be made only as "the State may by law provide." Section 205(f) of the underlying 1970 Act defines "State law" as the "unemployment compensation law of the State, approved by the [U.S. Secretary of Labor]." In North Carolina, that law is Chapter 96 of the General Statutes, the "Employment Security Law." Nothing in Chapter 96 of the General Statutes, then or now, authorizes the Governor to extend unemployment benefits by executive order, nor does Executive Order No. 93 or Executive Order No. 113, or any other such order, constitute a "State law" within the meaning of the 1970 Act or the North Carolina Constitution. Section 1 of Article II of the North Carolina Constitution provides that "the legislative power of the State shall be vested in the General



1 Assembly." Further, Section 6 of Article I of the North Carolina Constitution provides that the  
2 legislative and executive powers are "separate and distinct."

3 **SECTION 1.(d)** The General Assembly finds that the people of this State entrusted  
4 the creation of laws to the General Assembly, not to the executive branch, and that Executive  
5 Order No. 93 and Executive Order No. 113 were issued and acted upon by the executive branch  
6 in a manner contrary to the rule of law.

7 **SECTION 1.(e)** Further, the General Assembly finds that it enacted Section 6.16 of  
8 Session Law 2011-145 and, in so doing, validated the effects of the Governor's Executive Order  
9 No. 113 with the stated intent to allow extended benefits to be paid under the Tax Relief Act of  
10 2010 so long as payment of the extended benefits did not hinder the State's ability to reduce its  
11 debt owed to the federal government for unemployment benefits.

12 **SECTION 1.(f)** It is deemed, therefore, to be in the best interest of the people of  
13 this State that the General Assembly now ratify and hereby validate the effects of the  
14 Governor's Executive Order No. 113.

15 **SECTION 1.(g)** To maintain the rule of law with respect to State and federal  
16 relations pertaining to employment security laws in North Carolina, any executive order issued  
17 by the Governor that purports to extend unemployment insurance benefits, whether those  
18 benefits will be paid from federal or State funds, is void ab initio, unless the executive order is  
19 issued upon authority that is conferred expressly by an act enacted by the General Assembly or  
20 granted specifically to the Governor by the Congress of the United States.

21 **SECTION 1.(h)** Section 6.16(d) of S.L. 2011-145 reads as rewritten:

22 "**SECTION 6.16.(d)** This section becomes effective April 16, 2011, and expires ~~January 1,~~  
23 2012; January 1, 2013."

24 **SECTION 1.(i)** G.S. 96-12.01(a1)(4)c.3. reads as rewritten:

25 "3. This section applies as provided under the Tax Relief,  
26 Unemployment Insurance Reauthorization, and Job Creation  
27 Act of 2010 (P.L. 111-312) as it existed on December 17,  
28 2010, and is applicable to compensation for weeks of  
29 unemployment beginning after December 17, 2010, and  
30 ending on or before ~~December 31, 2011,~~ December 31, 2012,  
31 provided that:

- 32 I. The average rate of (i) insured unemployment, not  
33 seasonally adjusted, equaled or exceeded one hundred  
34 twenty percent (120%) of the average of such rates for  
35 the corresponding 13-week period ending in all of the  
36 preceding three calendar years and equaled or  
37 exceeded five percent (5%) or (ii) total  
38 unemployment, seasonally adjusted, as determined by  
39 the United States Secretary of Labor, for the period  
40 consisting of the most recent three months for which  
41 data for all states are published before the close of the  
42 week equals or exceeds six and one-half percent  
43 (6.5%); and  
44 II. The average rate of total unemployment in this State,  
45 seasonally adjusted, as determined by the United  
46 States Secretary of Labor, for the three-month period  
47 referred to in this subsection, equals or exceeds one  
48 hundred ten percent (110%) of the average for any of  
49 the corresponding three-month periods ending in the  
50 three preceding calendar years."

51 **SECTION 1.(j)** G.S. 96-12.01(a1)(4)e.3. reads as rewritten:

1 "3. This subdivision applies as provided under the Tax Relief,  
 2 Unemployment Insurance Reauthorization, and Job Creation  
 3 Act of 2010 (P.L. 111-312) as it existed on December 17,  
 4 2010, and is applicable to compensation for weeks of  
 5 unemployment beginning after December 17, 2010, and  
 6 ending on or before ~~December 31, 2011, December 31, 2012,~~  
 7 provided that:

- 8 I. The average rate of total unemployment, seasonally  
 9 adjusted, as determined by the United States Secretary  
 10 of Labor, for the period consisting of the most recent  
 11 three months for which data for all states are  
 12 published before the close of the week equals or  
 13 exceeds eight percent (8%); and
- 14 II. The average rate of total unemployment in this State,  
 15 seasonally adjusted, as determined by the United  
 16 States Secretary of Labor, for the three-month period  
 17 referred to in this subdivision equals or exceeds one  
 18 hundred ten percent (110%) of the average for any of  
 19 the corresponding three-month periods ending in the  
 20 three preceding calendar years."

21 **SECTION 1.(k)** This section is effective when it becomes law and applies  
 22 retroactively to January 1, 2012.

23  
 24 **PART II. RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401**

25 **SECTION 2.(a)** The Current Operations Appropriations Act for the 2012-2013  
 26 fiscal year shall provide for the annual salaries of the Board of Review, as provided in  
 27 G.S. 96-4(b).

28 **SECTION 2.(b)** G.S. 96-14(2) reads as rewritten:

29 **"§ 96-14. Disqualification for benefits.**

30 An individual shall be disqualified for benefits:

- 31 ...
- 32 (2) For the duration of the individual's unemployment beginning with the first  
 33 day of the first week after the disqualifying act occurs with respect to which  
 34 week an individual files a claim for benefits if it is determined by the  
 35 Division that such individual is, at the time such claim is filed, unemployed  
 36 because he or she was discharged for misconduct connected with the work.  
 37 Misconduct connected with the work is defined as intentional acts or  
 38 omissions evincing disregard of an employer's interest or standards of  
 39 behavior which the employer has a right to expect or has explained orally or  
 40 in writing to an employee or evincing carelessness or negligence of such  
 41 degree as to manifest equal disregard. Receipt by the employee of no fewer  
 42 than three written reprimands from the employer in the 12 months that  
 43 immediately precedes the employee's termination is prima facie evidence of  
 44 misconduct connected with the work. Examples of misconduct connected  
 45 with the work include the following:

46 ~~"Discharge for misconduct with the work" as used in this section is~~  
 47 ~~defined to include but not be limited to~~

- 48 a. ~~separation~~ Separation initiated by an employer for violating the  
 49 employer's written alcohol or illegal drug policy; ~~reporting policy.~~
- 50 b. Reporting to work significantly impaired by alcohol or illegal ~~drugs;~~  
 51 consuming drugs.

- 1           c.     ~~Consuming~~ alcohol or illegal drugs on employer's ~~premises;~~  
2                 ~~conviction~~ premises.
- 3           d.     ~~Conviction~~ by a court of competent jurisdiction for manufacturing,  
4                 selling, or distribution of a controlled substance punishable under  
5                 G.S. 90-95(a)(1) or G.S. 90-95(a)(2) ~~while in the employ of said~~  
6                 ~~employer; being~~ if the offense is related to or connected with an  
7                 ~~employee's work for an employer or is in violation of a reasonable~~  
8                 work rule or policy.
- 9           e.     ~~Being~~ terminated or suspended from employment after arrest or  
10                conviction for an offense involving violence, sex crimes, or illegal  
11                ~~drugs; any~~ drugs if the offense is related to or connected with an  
12                ~~employee's work for an employer or is in violation of a reasonable~~  
13                work rule or policy.
- 14           f.     ~~Any~~ physical violence whatsoever related to an employee's work for  
15                an employer, including, but not limited to, physical violence directed  
16                at supervisors, subordinates, coworkers, vendors, customers, or the  
17                general public; ~~inappropriate~~ public.
- 18           g.     ~~Inappropriate~~ comments or behavior towards supervisors,  
19                subordinates, coworkers, vendors, customers, or to the general public  
20                relating to any federally protected characteristic which creates a  
21                hostile work ~~environment; theft~~ environment.
- 22           h.     ~~Theft~~ in connection with the ~~employment; forging~~ employment.
- 23           i.     ~~Forging~~ or falsifying any document or data related to employment,  
24                including a previously submitted application for ~~employment;~~  
25                ~~violation~~ employment.
- 26           j.     ~~Violation~~ of an employer's written absenteeism ~~policy;~~  
27                ~~refusing~~ policy.
- 28           k.     ~~Refusing~~ to perform reasonably assigned work ~~tasks; tasks.~~ ~~and the~~  
29                ~~failure to adequately perform any other employment duties as~~  
30                ~~evidenced by no fewer than three written reprimands received in the~~  
31                ~~12 months immediately preceding the employee's termination. This~~

32                The phrase "discharge for misconduct connected with the work" does not  
33                include the discharge or an employer-initiated separation of a severely  
34                disabled veteran, as defined in G.S. 96-8, for any act or omission of the  
35                veteran that the Division determines are attributed to a disability incurred or  
36                aggravated in the line of duty during active military service, or to the  
37                veteran's absence from work to obtain care and treatment of a disability  
38                incurred or aggravated in the line of duty during active military service."

39           **SECTION 2.(c)** G.S. 96-15(b)(2) reads as rewritten:

40           "(2) Adjudication. – When a protest is made by the claimant to the initial or  
41                monetary determination, or a question or issue is raised or presented as to the  
42                eligibility of a claimant under G.S. 96-13, or whether any disqualification  
43                should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant  
44                to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator  
45                may consider any matter, document or statement deemed to be pertinent to  
46                the issues, including telephone conversations, and after such consideration  
47                shall render a conclusion as to the claimant's benefit entitlements. The  
48                adjudicator shall notify the claimant and all other interested parties of the  
49                conclusion reached. The conclusion of the adjudicator shall be deemed the  
50                final decision of the Division unless within 30 days after the date of  
51                notification or mailing of the conclusion, whichever is earlier, a written

1 appeal is filed pursuant to rules adopted by the Division. The Division shall  
2 be deemed an interested party for such purposes and may remove to itself or  
3 transfer to an appeals referee the proceedings involving any claim pending  
4 before an adjudicator.

5 Provided, any interested employer shall be allowed ~~30~~10 days from the  
6 ~~earlier of mailing or delivery of the notice of the filing of a claim against the~~  
7 employer's account to protest the claim and have the claim referred to an  
8 adjudicator for a decision on the question or issue raised. A copy of the  
9 notice of the filing shall be sent contemporaneously to the employer by  
10 telefacsimile transmission if a fax number is on file. Provided further, no  
11 question or issue may be raised or presented by the Division as to the  
12 eligibility of a claimant under G.S. 96-13, or whether any disqualification  
13 should be imposed under G.S. 96-14, after 45 days from the first day of the  
14 first week after the question or issue occurs with respect to which week an  
15 individual filed a claim for benefits. None of the provisions of this  
16 subsection shall have the force and effect nor shall the same be construed or  
17 interested as repealing any other provisions of G.S. 96-18.

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

22 **SECTION 2.(d)** G.S. 96-15(f) reads as rewritten:

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

28 All testimony at any hearing before an appeals referee upon a disputed claim shall be  
29 recorded unless the parties have waived the evidentiary hearing and entered into a  
30 stipulation resolving the issues pending before the appeals referee, hearing officer, or other  
31 employee assigned to make the decision, recording is waived by all interested parties. If the  
32 testimony is recorded, it but need not be transcribed unless the disputed claim is further  
33 appealed and, one or more of the parties objects, under such rules as the Division may adopt, to  
34 being provided a copy of the tape recording of the hearing. Any other provisions of this  
35 Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such  
36 reasonable fee for the transcript as the Division may by regulation provide. The fee so  
37 prescribed by the Division for a party shall not exceed the lesser of sixty-five cents (65¢) per  
38 page or sixty-five dollars (\$65.00) per transcript. The Division may by regulation provide for  
39 the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in  
40 the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110,  
41 the Division shall waive the fee.

42 The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer,  
43 or other employee assigned to make the decision believes the stipulation provides sufficient  
44 information to make a decision, then the appeals referee, hearing officer, or other employee  
45 assigned to make the decision may accept the stipulation and render a decision based on the  
46 stipulation. If the appeals referee, hearing officer, or other employee assigned to make the  
47 decision does not believe the stipulation provides sufficient information to make a decision,  
48 then the appeals referee, hearing officer, or other employee assigned to make the decision must  
49 reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded  
50 hearing."

1           **SECTION 2.(e)** Subsections (b) through (d) of this section become effective  
2 November 1, 2012. The remainder of this section is effective when it becomes law.

3  
4 **PART III. COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE**  
5 **EXTENSION ACT OF 2011**

6           **SECTION 3.(a)** G.S. 110-129.2(c) reads as rewritten:

7           "(c) Report Contents. – Each report required by this section shall contain the name,  
8 address, ~~and~~ social security number of the newly hired employee, the date services for  
9 remuneration were first performed by the newly hired employee, and the name and address of  
10 the employer and the employer's identifying number assigned under section 6109 of the  
11 Internal Revenue Code of 1986 and the employer's State employer identification number.  
12 Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form,  
13 and may be transmitted magnetically, electronically, or by first-class mail."

14           **SECTION 3.(b)** G.S. 110-129.2(j) is amended by adding a new subdivision to  
15 read:

16           "(j) Definitions. – As used in this section, unless the context clearly requires otherwise,  
17 the term:

18           ...

19           (5) "Newly hired employee" means (i) an employee who has not previously  
20 been employed by the employer and (ii) an employee who was previously  
21 employed by the employer but has been separated from such prior  
22 employment for at least 60 consecutive days."

23           **SECTION 3.(c)** G.S. 96-9(c)(2) is amended by adding a new sub-subdivision to  
24 read:

25           "(2) Charging of benefit payments. –

26           ...

27           f. The Division shall charge benefits to an employer's account when it  
28 determines that an overpayment has been made to a claimant and it  
29 determines that both of the following conditions apply:

30           1. The overpayment occurred because the employer failed to  
31 respond timely or adequately to a written request of the  
32 Division for information relating to an unemployment  
33 compensation claim.

34           2. The employer exhibits a pattern of failure to respond timely  
35 or adequately by failing to respond to written requests from  
36 the Division for information relating to an unemployment  
37 compensation claim on two or more occasions. If an  
38 employer uses a third-party agent to respond on its behalf to  
39 the Division, then the actions of the agent must be considered  
40 when determining a pattern of failure to respond timely or  
41 adequately. A pattern is established based on the agent's  
42 behavior overall and not only with respect to its behavior  
43 related to the employer.

44           For purposes of this sub-subdivision, written notification may  
45 include a request sent electronically. A response is considered  
46 untimely if it fails to be made within the time allowed under  
47 G.S. 96-15(b)(2). A response is considered inadequate if it fails to  
48 provide sufficient facts to enable the Division to make a correct  
49 determination of benefits. However, a response may not be  
50 considered inadequate if the Division fails to request the necessary  
51 information.

1           The prohibition on the noncharging of an employer's account  
2           under this sub-subdivision applies to each week of unemployment  
3           compensation that is an overpayment until the Division makes a  
4           determination that the claimant is no longer eligible for the overpaid  
5           amount and stops making the overpayment. If the claim is a  
6           combined-wage claim, the determination of noncharging for the  
7           combined-wage claim shall be made by the paying state. If the  
8           response from the employer does not meet the criteria established by  
9           the paying state for an adequate or timely response, the paying state  
10           must promptly notify the transferring state of its determination and  
11           the employer must be appropriately charged. The Division may  
12           waive the prohibition for good cause."

13           **SECTION 3.(d)** G.S. 96-18 is amended by adding a new subsection to read:

14           "(h) Mandatory Federal Penalty. – A person who has been held ineligible for benefits  
15           under subsection (e) of this section and who, because of those same acts or omissions, has  
16           received any sum as benefits under this Chapter to which the person is not entitled shall be  
17           assessed a penalty in an amount equal to fifteen percent (15%) of the amount of the erroneous  
18           payment. The penalty amount shall be payable to the fund. The penalty applies to an erroneous  
19           payment made under any State program providing for the payment of unemployment  
20           compensation as well as an erroneous payment made under any federal program providing for  
21           the payment of unemployment compensation. The notice of determination or decision advising  
22           the person that benefits have been denied or adjusted pursuant to subsection (e) of this section  
23           must include the reason for the finding of an erroneous payment, the penalty amount assessed  
24           under this subsection, and the reason the penalty has been applied.

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

30           **SECTION 3.(e)** G.S. 96-6(a) reads as rewritten:

31           "(a) Establishment and Control. – There is hereby established as a special fund, separate  
32 and apart from all public moneys or funds of this State, an Unemployment Insurance Fund,  
33 which shall be administered by the Division's Employment Insurance Section exclusively for  
34 the purposes of this Chapter. All moneys in the fund shall be commingled and undivided. This  
35 fund shall consist of:

- 36           (1) All contributions collected under this Chapter, together with any interest  
37           earned upon any moneys in the ~~fund;~~fund.
- 38           (2) Any property or securities acquired through the use of moneys belonging to  
39           the ~~fund;~~fund.
- 40           (3) All earnings of such property or ~~securities;~~securities.
- 41           (4) Any moneys received from the federal unemployment account in the  
42           unemployment trust fund in accordance with Title XII of the Social Security  
43           Act as ~~amended;~~amended.
- 44           (5) All moneys credited to this State's account in the Unemployment Trust Fund  
45           pursuant to section 903 of Title IX of the Social Security Act, as amended,  
46           (~~U.S.C.A. Title 42, sec. 1103 (a);~~U.S.C.A. Title 42, sec. 1103 (a)).
- 47           (6) All moneys paid to this State pursuant to section 204 of the Federal-State  
48           Extended Unemployment Compensation Act of ~~1970;~~1970.
- 49           (7) Reimbursement payments in lieu of contributions.
- 50           (8) Any federally mandated penalty amount assessed under G.S. 96-18(h).
- 51           ~~All moneys in the fund shall be commingled and undivided."~~

1           **SECTION 3.(f)** Subsection (c) of this section becomes effective October 1, 2013,  
2 and applies to an overpayment established on or after that date. Subsections (d) and (e) of this  
3 section become effective October 1, 2013, and apply to an erroneous payment determined  
4 under G.S. 96-18(e) to be a fraudulent overpayment on or after that date. The remainder of this  
5 section becomes effective July 1, 2012.

6  
7 **PART IV. ENHANCE UNEMPLOYMENT COMPENSATION FRAUD DETECTION**  
8 **AND RECOVERY, AS RECOMMENDED BY THE HOUSE UNEMPLOYMENT**  
9 **FRAUD TASK FORCE**

10           **SECTION 4.(a)** G.S. 96-18(a) reads as rewritten:

11           "(a) ~~Any~~ It shall be unlawful for any person who makes to make a false statement or  
12 representation knowing it to be false or to knowingly fails-fail to disclose a material fact to  
13 obtain or increase any benefit under this Chapter or under an employment security law of any  
14 other state, the federal government, or of a foreign government, either for himself or any other  
15 ~~person, shall be guilty of a Class 1 misdemeanor, and each such false statement or~~  
16 ~~representation or failure to disclose a material fact shall constitute a separate offense.~~person.  
17 Records, with any necessary authentication thereof, required in the prosecution of any criminal  
18 action brought by another state or foreign government for misrepresentation to obtain benefits  
19 under the law of this State shall be made available to the agency administering the employment  
20 security law of any such state or foreign government for the purpose of such prosecution.  
21 Photostatic copies of all records of agencies of other states or foreign governments required in  
22 the prosecution of any criminal action under this section shall be as competent evidence as the  
23 originals when certified under the seal of such agency, or when there is no seal, under the hand  
24 of the keeper of such records.

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

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

31           **SECTION 4.(b)** G.S. 96-18(g)(1) is repealed.

32           **SECTION 4.(c)** G.S. 96-18(g)(2) reads as rewritten:

33           "(2) Any person who has received any sum as benefits under this Chapter by  
34 reason of the nondisclosure or misrepresentation by him or by another of a  
35 material fact (irrespective of whether such nondisclosure or  
36 misrepresentation was known or fraudulent) or has been paid benefits to  
37 which he was not entitled for any reason (including errors on the part of any  
38 representative of the Division) ~~other than subparagraph (1) above shall be~~  
39 ~~liable to repay such sum to the Division as provided in subparagraph (3)~~  
40 ~~below, provided no such recovery or recoupment of such sum may be~~  
41 ~~initiated after three years from the last day of the year in which the~~  
42 ~~overpayment occurred.~~subdivision (3) of this subsection."

43           **SECTION 4.(d)** The Department of the Treasury, Financial Management Service,  
44 is the federal government's central debt collection agency. It develops and maintains a  
45 centralized offset program known as the Treasury Offset Program (TOP), by which payments  
46 are offset to collect delinquent debts owed to federal agencies and states. State Unemployment  
47 Compensation debts are now eligible for referral to the Program, pursuant to Public Law  
48 110-32 and Public Law 111-291.

49           It is the desire of the General Assembly for the State to participate in the  
50 Unemployment Insurance Compensation Debt Program on or before January 1, 2013. The  
51 Division of Employment Security is required to report to the House Unemployment Fraud Task



1 Force by September 1, 2012, November 1, 2012, and January 1, 2013, on the implementation  
2 of the TOP. The report should contain, at a minimum, the following:

- 3 (1) An implementation time line, including a go-live date and status update on  
4 where the Division is in the process.
- 5 (2) A detailed list of implementation requirements. For each requirement, the  
6 Division is to provide any barriers and proposed solutions to each barrier.
- 7 (3) An itemized accounting of the cost to implement TOP, including the source  
8 of funds used. Recurring and nonrecurring costs shall be broken out  
9 accordingly.
- 10 (4) For the September 1 report, the Division is to provide an estimate of how  
11 much it anticipates recovering annually through TOP. The report should  
12 include the methodology used to arrive at this estimate.

13 **SECTION 4.(e)** Subsection (a) of this section becomes effective December 1,  
14 2012, and applies to offenses committed on or after that date. Subsections (b) and (c) of this  
15 section become effective October 1, 2012, and apply to an overpayment established on or after  
16 that date. The remainder of this section is effective when it becomes law.

## 17 18 **PART V. TECHNICAL CHANGES REQUESTED BY THE DIVISION OF** 19 **EMPLOYMENT SECURITY**

20 **SECTION 5.(a)** The title of Article 4 of Chapter 96 of the General Statutes reads  
21 as rewritten:

22 "Article 4.

23 "Labor and Economic Analysis Division: Job Training, Education, and Placement Information  
24 Management."

25 **SECTION 5.(b)** G.S. 96-31 reads as rewritten:

### 26 **"§ 96-31. Definitions.**

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

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

40 **SECTION 5.(c)** G.S. 96-32 reads as rewritten:

### 41 **"§ 96-32. Common follow-up information management system created.**

42 (a) The ~~DES~~ Labor and Economic Analysis Division shall develop, implement, and  
43 maintain a common follow-up information management system for tracking the employment  
44 status of current and former participants in State job training, education, and placement  
45 programs. The system shall provide for the automated collection, organization, dissemination,  
46 and analysis of data obtained from State-funded programs that provide job training and  
47 education and job placement services to program participants. In developing the system, the  
48 ~~DES~~ Division shall ensure that data and information collected from State agencies is  
49 confidential, not open for general public inspection, and maintained and disseminated in a  
50 manner that protects the identity of individual persons from general public disclosure.

1 (b) The ~~DES~~ Labor and Economic Analysis Division shall adopt procedures and  
2 guidelines for the development and implementation of the CFS authorized under this section.

3 (c) Based on data collected under the CFS, the ~~DES~~ Labor and Economic Analysis  
4 Division shall evaluate the effectiveness of job training, education, and placement programs to  
5 determine if specific program goals and objectives are attained, to determine placement and  
6 completion rates for each program, and to make recommendations regarding the continuation  
7 of State funding for programs evaluated."

8 **SECTION 5.(d)** G.S. 96-33 reads as rewritten:

9 "**§ 96-33. State agencies required to provide information and data.**

10 (a) Every State agency and local government agency or entity that receives State or  
11 federal funds for the direct or indirect support of State job training, education, and placement  
12 programs shall provide to the ~~DES~~ Labor and Economic Analysis Division all data and  
13 information available to or within the agency or entity's possession requested by the ~~DES~~  
14 Division for input into the common follow-up information management system authorized  
15 under this ~~Article~~ Article and for such other official functions as are performed by the Division.  
16 The Division of Employment Security shall provide all information in its possession and  
17 control requested by the Division in order for the Division to accomplish the purpose set forth  
18 in this Article and such other official functions performed by it.

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

31 **SECTION 5.(e)** G.S. 96-35 reads as rewritten:

32 "**§ 96-35. Reports on common follow-up system activities.**

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

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

41 **SECTION 5.(f)** This section is effective when it becomes law.

## 42

### 43 **PART VI. NC FACTS PROGRAM**

44 **SECTION 6.(a)** G.S. 96-4(x)(1) reads as rewritten:

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

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

...."

**SECTION 6.(b)** This section is effective when it becomes law.

**PART VII. EFFECTIVE DATE**

**SECTION 7.** Except as otherwise provided, this act is effective when it becomes law.